

UNITED STATES DEPARTMENT OF TRANSPORTATION
TECHNICAL HAZARDOUS LIQUID PIPELINE
SAFETY STANDARDS COMMITTEE

HAZARDOUS LIQUID ADVISORY COMMITTEE MEETING

Room 6200
U.S. Department of Transportation
400 7th Street, SW
Washington, D.C.

Monday, September 11, 2000
11:30 a.m.

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BARBARA BETSOCK, ESQ.

Also Present:

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MARTY MATHESON
LOUISE SCOTT
American Petroleum Institute

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1 P R O C E E D I N G S

2 11:38

3 a.m.

4 Welcome

5 MS. GERARD: Please state your name before
6 you begin your comments. Your last name will do.

7 I just want to welcome you to this new
8 format for our advisory committee meetings, and we
9 appreciate all of your times and working with us in
10 this most cost-effective manner.

11 I know that you've all been busy reviewing
12 the information that we sent you since the last
13 meeting. I hope that we responded to your questions
14 with the information that you needed.

15 It's a very important day for us. We have
16 a tight agenda which we need to speak to and stay
17 on. Between now and 12:45, we'll be dealing with
18 the USA rulemaking and evaluation as one package,
19 and then between 12:45 and 1:45, we will be dealing
20 with the Integrity Management for Hazardous Liquid
21 Pipelines and its evaluation as a second package.

22 The only other comment I want to make to

1 start the meeting is that there's been a lot of work
2 by a lot of people to bring this to this point. We
3 need to have this vote today, and I'll use an
4 expression that has gotten very popular in the
5 Office of Pipeline Safety. Please don't let the
6 perfect be the enemy of the good.

7 We have very good intentions here to get
8 out a good rulemaking, and we're going to keep
9 working. There's going to be a series of
10 rulemakings. This is the first. So, I ask you to
11 make your comments. We'll be calling for amendments
12 as needed, but we must get through this today.

13 I'm going to turn the meeting over to
14 Christina to begin her brief discussion on the USA
15 rulemaking package.

16 Vote: "Pipeline Safety: Areas Unusually
17 Sensitive to Environmental Damage"

18 Vote: Draft Regulatory Evaluation to Notice of
19 Proposed Rulemaking (NPRM) - "Pipeline Safety:
20 Areas Unusually Sensitive to Environmental Damage"

21 MS. SAMES: Hello, all. Everyone should
22 have as part of their package a chart which listed
23 every- thing that we tested, from the comments
24 received from our Technical Review, from the Pilot

1 Test, and the comments received from the public. We
2 tested, just to refresh your memory, as many things
3 as possible in the time constraints that we had.

4 At our last briefing, there were four
5 things that -- actually five things that we were
6 asked to test, in addition to the previous chart.
7 That was adding all lakes and all reservoirs as
8 unusually sensitive areas, and you will find those
9 statistics on the Drinking Water Page of your chart.

10 We were also asked to test removing the
11 adequate alternative drinking water source filter
12 criteria, and that statistic is also listed on the
13 Drinking Water chart.

14 We were asked to test adding all sole-
15 source aquifer outcrops and recharge areas.
16 Unfortunately, in the time constraints that we had,
17 we were not able to do that, and the last thing that
18 we were asked to test was to add all vulnerable
19 species, and once again, that was something that we
20 could not test.

21 However, we were able to determine the
22 percent of the vulnerable species that we picked up
23 through the notice of proposed rulemaking and the
24 four recommended changes that I gave to the advisory

1 committee.

2 For those of you who may not have been able
3 to participate on that previous briefing, the four
4 recommended changes were adding the most viable
5 species. Most viable species would be added based
6 on the Nature Conservancy's and the Heritage
7 Program's EO Ranks, using EO Ranks of A or B.

8 Also recommended adding a -- and B. Sorry.

9 Also adding all aquatically-dependent species and
10 all terrestrial species that had limited ranges, and
11 we discussed limited range would mean about five
12 acres or less.

13 I also made the recommendation to add rare
14 communities. We would put those actually through
15 our current filtering criteria, so that we got the
16 most pertinent rare communities, and then, finally,
17 adding additional species congregation areas, such
18 as the Colonial Water Bird data.

19 With using those four additions to what was
20 proposed in the notice of proposed rulemaking for
21 the vulnerable species.

22 Texas, we ended up picking up about 12
23 percent of the vulnerable species. California,
24 about 11, and Louisiana, about seven.

1 We were also asked to look at how the
2 changes that we made to the drinking water portion
3 of the notice of proposed rulemaking, if it would
4 include in the end all of Lake Tawakani, and it did.

5 For those of you once again who may not
6 have been on the previous call, the changes that I
7 recommended to be made to the Drinking Water Notice
8 of Proposed Rulemaking were as follows: replacing
9 the wellhead protection areas with the source water
10 protection areas.

11 The source water protection areas are
12 something new that's being created under the
13 Environmental Protection Agency. It's very similar
14 to the wellhead protection areas that we currently
15 have in the notice of proposed rulemaking, but the
16 source water protection areas also look at surface
17 water intakes and surface water under the -- ground
18 water under the influence of surface water.

19 I also recommended changing the definition
20 that we have for an adequate alternative drinking
21 water source to make it from a one-month supply for
22 ground water sources to a six-month supply for
23 ground water sources, and to make all preliminary
24 drinking water USAs a USA when we could not verify

1 that an adequate alternative drinking water source
2 existed or was available.

3 I also recommended removing the doubling of
4 the wellhead protection areas in sole-source
5 aquifers, and then possibly adding the karst sole-
6 source aquifer outcrops. That would be the outcrop
7 areas and the recharge areas of the sole-source
8 aquifers that are karst in nature.

9 So, that pretty much brings everyone up-to-
10 speed. You should have the chart in front of you,
11 and I guess what we should probably do is first open
12 this up for questions and then move into the vote.

13 I know we've spent a lot of time on USAs
14 over the past couple of years, and we've had a lot
15 of questions, but I'm sure there's probably more on
16 the technical analysis that was done or the chart
17 itself or other things.

18 So, questions from the committee?

19 MS. EPSTEIN: Christina, this is Lois
20 Epstein. Before we vote, I have a process question.

21 On the last call, we were asked for a few
22 additional runs to be done, and I am not an
23 ecologist, and I did spend quite a bit of time since
24 that call speaking with David Wilcox, an ecologist

1 here, who, I think, you know of because he was
2 recommended to be on the panel and wasn't able to do
3 it.

4 But he had suggested one additional
5 analysis, that instead of using just most viable,
6 including all critically-imperiled and imperiled and
7 endangered species and did not think that would
8 require a lot of additional land area, if that
9 analysis was done. So, not just limiting it to the
10 most viable.

11 What is the possibility of that analysis
12 being able to be performed quickly and to add --
13 maybe we can vote without that being done, and then
14 you could have that done, and we could see how it
15 comes out or you can see how it comes out?

16 I just don't know what the right step is at
17 this point since, on that last call, I wasn't in a
18 position to ask for it.

19 MS. SAMES: Well, I know that under the --
20 I know you referenced the most viable. Under the
21 most viable, we were picking up the most viable for
22 both the critically-imperiled, the imperiled and the
23 threatened and endangered, but I believe your
24 request was actually to test including all of the

1 critically-imperiled, all the imperiled, and all the
2 threatened and endangered, is that correct?

3 MS. EPSTEIN: Yes. Basically, the way they
4 explained it to me is that representation of a
5 species is not good enough because if something is
6 critically imperiled, imperiled, then it's so rare,
7 that loss of a single population could lead -- and
8 I'm actually reading a quote from him, "could lead
9 to imminent extinction".

10 So, he actually thought that focusing on
11 just most viable was too limited.

12 MS. SAMES: Well, we did test including all
13 critically-imperiled and all imperiled species, and
14 if you look at the ecological chart, the very last
15 set of statistics, it would be the third one down,
16 the one that says "plus imperiled species".

17 What we did not test is the critically-
18 imperiled plus the imperiled plus the threatened and
19 endangered species.

20 MR. STEIN: Christina, this is Bruce Stein.
21 Lois, I think that what you have outlined there in
22 terms of all critically-imperiled, imperiled and
23 threatened and endangered in essence constitutes
24 that subset called "all candidates", and the

1 distinction, I think, is not so much with the
2 imperiled and critically-imperiled because those do
3 tend to be very restricted in their definition, but
4 it has to do particularly with some of the wide-
5 ranging threatened and endangered species, and
6 that's where you get a really major increase in
7 aerial coverage with not the same level of
8 relationship of sort of the restricted populations.

9 So, desert tortoise in California as an
10 example, and I think that the concept of using the
11 most viable isn't the most viable of all, but after
12 you go through various criteria, you in essence
13 capture those things that have the most restricted
14 ranges, and therefore every population is at
15 greatest risk, and the most viable criteria, if it's
16 being used by OPS in the way I think it is, is more
17 to ensure that some of these wide-ranging things are
18 incorporated in there in a way that doesn't require
19 that you designate really vast areas that may or may
20 not actually have, you know, populations or viable
21 populations on them.

22 MS. EPSTEIN: Okay. If I understand you
23 right, basically then, Bruce and Christina, the
24 comparison would be between all candidates, and the

1 analysis that is most viable and aquatic-
2 dependent/limited range, and it does appear that the
3 land areas covered are not that different.

4 I actually should caveat what I said, that
5 David seemed more concerned about the endangered
6 rather than the threatened, and I don't know if
7 there's a difference there that's meaningful or
8 makes sense to include.

9 MS. HAMSHER: This is Denise Hamsher. I
10 have another process question. I think in both of
11 the USA definition bullets for the drinking water
12 and ecological, I would guess that what we're going
13 to be faced with is a number of either
14 recommendations, one by one, or combinations
15 thereof, based on some of your recommendations, plus
16 some others, from members.

17 I think there's probably two ways that we
18 can do this. We can kind of make motions that have
19 these kind of combinations, the optimal combination,
20 or we can make a motion to accept the definition of
21 USA as written with the following recommendations,
22 and one by one go through either modifications or
23 expansion of the definition, rather than having to
24 worry about the kind of perfect combination and kind

1 of getting bogged down in that, and then take a vote
2 one by one on each of the amendments and just see if
3 there's either unanimity or not on each one in and
4 of themselves.

5 MS. EPSTEIN: I can't hear.

6 MS. SAMES: Let me try moving it closer to
7 Denise.

8 The recommendation was to start with the
9 notice of proposed rulemaking as written, with --
10 and then discuss the various recommendations and
11 propose changes to the notice of proposed
12 rulemaking, so that we can determine where the
13 committee has consensus or majority vote and where
14 it does not, is that correct, Denise?

15 MS. HAMSHER: Yes. Rather than coming up
16 with kind of a whole series of motions, each with a
17 unique kind of combination, which may get confusing
18 to us all.

19 MS. GERARD: Well, is there some way we can
20 identify who among the committee has an amendment to
21 offer? First, I should say I believe that -- are we
22 voting -- having them vote with the amendment that
23 Christina has proposed as her recommendation?

24 MS. SAMES: I think what Denise wanted --

1 was suggesting was that we take the notice of
2 proposed rulemaking, and then allow the committee to
3 -- we've given our proposal, allow the committee to
4 make their recommendations to the notice of proposed
5 rulemaking and discuss them as they come up.

6 MS. GERARD: Okay.

7 MS. HAMSHER: Which could include what
8 Christina said, plus --

9 MS. GERARD: Some others.

10 MS. HAMSHER: -- some others for the table.

11 MS. GERARD: Okay. Well, let me ask. Who
12 on the advisory committee is prepared to or has some
13 amendment that they want to offer?

14 MS. EPSTEIN: Well, this is Lois, and I may
15 need some help, I don't know if Barbara's on the
16 line, about how to formulate it, but, yeah, I guess
17 my -- the general gist of where I'm coming from is
18 that the rule is moving in the right direction, and
19 the follow-up analyses are quite helpful.

20 The question is how do you approve that
21 rather than the original proposal?

22 MS. GERARD: Barb, can you speak?

23 MS. SAMES: And could you -- I'm sorry, but
24 let's either pass this down so everyone can hear you

1 or --

2 MS. BETSOCK: Lois, are you talking about
3 the amendments you might propose would be to add
4 such a change from what Christina had talked about?

5 MS. EPSTEIN: Well, the proposal is
6 targeted as of when?

7 MS. BETSOCK: That she has talked about
8 making. Right now, what you would be voting on is
9 the proposal.

10 MS. SHOWALTER: This is Marilyn Showalter.
11 Which proposal? Do we have in front of us the
12 original rule as of April or do we have in front of
13 us a motion or something in writing or oral from OPS
14 that is proposing in a motion to amend -- to accept
15 the rule as amended and as outlined by Cheryl?

16 MS. BETSOCK: What you have is the USA
17 rule, the December rulemaking, and you should have
18 that notice of proposed rulemaking there, and that
19 is what you're voting on.

20 MS. SHOWALTER: We're voting on the
21 original rule right now?

22 MS. BETSOCK: On the proposed rule, yes.

23 MS. SHOWALTER: With no motion to -- no
24 motion in front of us that would recommend

1 amendment?

2 MS. BETSOCK: Well, we --

3 MS. EPSTEIN: That is not my question. I
4 would like to vote on the -- some sort of amendment,
5 and I don't know how to formulate it, that makes
6 sure that the follow-up analyses and the intent to
7 maximize the species is covered in the minimization
8 of the land. It's sort of part of the -- what I
9 would feel comfortable voting on.

10 MS. HAMSHER: This is --

11 MS. SAMES: Pass this back.

12 MS. GERARD: Wait, wait. State your name.

13 MS. HAMSHER: This is Denise Hamsher. Let
14 me make a suggestion to see if this would work to
15 make sure everything's clean.

16 What we have is suggestions from Christina,
17 not motions. So, what I would recommend, and this
18 isn't a motion, so I'm just going to pitch this out
19 as an example, as part of our process discussion,
20 that we make a motion to accept the USA definition
21 as proposed and recommend that OPS consider, and the
22 first one we would do is move for OPS to consider
23 the wellhead protection area, a substitute for the
24 source water protection, and then finish that up

1 with a vote, then go to the next one and say we also
2 recommend that OPS consider the six-month
3 modification for alternative versus 30 and hit them
4 one by one and take a vote in and of themselves.

5 We would repeat some or all of, I think,
6 where Christina is coming from, and there may be
7 other modifications or recommendations from other
8 committee members that we can take one by one.
9 It'll be a series of votes on individual
10 recommendations, but at the end, you have a
11 recommendation to accept the USA as proposed and
12 recommend consideration of a whole litany of votes,
13 some of which may not be unanimous.

14 MS. BETSOCK: That is acceptable.

15 MS. SAMES: For those of you who may not
16 have heard, that's acceptable.

17 MS. SHOWALTER: This is Marilyn Showalter.
18 It's a fine point, but using your language, your
19 sample language, we're not recommending, we're
20 saying the proposed rule is technically feasible,
21 practical, if the following change is made, and then
22 aren't we recommending one by one the, you know,
23 following -- we're recommending a change one by one?

24 MS. HAMSHER: Yes.

1 MS. SHOWALTER: We're not beginning by
2 accepting the rule.

3 MS. HAMSHER: You're right.

4 MS. SHOWALTER: You're beginning.

5 MS. HAMSHER: We would make it --

6 MS. SHOWALTER: We're saying it's
7 acceptable if, and then we'll add in the "if".

8 MS. HAMSHER: Yes, I would agree or subject
9 to.

10 MS. SHOWALTER: Well, I would say the
11 language of "if", and there is a difference between
12 subject to and if.

13 MS. SCHELHAUS: This is good. I agree with
14 that, because -- and depending whether you do or
15 don't do certain stuff will be whether I could
16 concur with the rule or not.

17 MS. SAMES: Okay. So, let's start with the
18 ecological, if that's okay with the committee, and I
19 guess I toss it back to the committee to make
20 recommended changes to the notice of proposed
21 rulemaking.

22 MS. HAMSHER: Actually, I think we need to
23 make the motion to begin with, and I'll throw one
24 out because I anticipated some -- we have some

1 written. Anybody jump in. This is Denise Hamsher
2 again.

3 Let's try this. The Hazardous Liquid
4 Pipeline Safety Standards Committee supports the
5 notice of proposed rulemaking, I move this, on areas
6 unusually sensitive to environmental damage in the
7 Federal Register on December 30th, 1999, and finds
8 the proposal technically feasible, reasonable, cost-
9 effective and practical, if the following
10 recommended modifications are made to the
11 definition.

12 Modification 1. The advisory committee
13 recommends that where available -- I'm sorry -- I
14 jumped to drinking water.

15 The Recommendation Number 1. The advisory
16 committee recommends that the definition for
17 ecological resource USA be expanded to add "most
18 viable element occurrence and rare community
19 categories". Those are two --

20 MS. GERARD: You're packaging two?

21 MS. HAMSHER: I'm packaging two. If
22 anybody wants to separate them, we could amend the
23 motion. MS. GERARD: Most viable and rare
24 communities.

1 MS. EPSTEIN: This is Lois. I do want to
2 separate the two.

3 MS. HAMSHER: Okay. So, let's start with
4 most viable.

5 MS. SHOWALTER: This is Marilyn. I think
6 in your language, you've got a double contingency
7 there. You began, I think, correctly, which is the
8 rule is acceptable if, and the following
9 modification, and then with the modification, it
10 should just simply state what the modification is.

11 The modification is not that we recommend.

12 The modification is, you know, addition of, you
13 know, one category or another.

14 MS. BETSOCK: Could I suggest -- this is
15 Barbara again.

16 MS. HAMSHER: Wait one second, Barbara.

17 MS. BETSOCK: Could I suggest that it might
18 make it easier, given the difficulties of a
19 telephone conference, if you voted on the amendments
20 first, and then do the overall vote on the rule, if
21 these changes were made?

22 MS. SHOWALTER: That sounds good.

23 MS. HAMSHER: Okay. So, the -- so, we'll
24 change the motion, since we don't have a second. We

1 move that the advisory committee recommends that the
2 definition for ecological resource be expanded to
3 add most viable element occurrence.

4 MS. MORGAN: This is Mary Morgan. I second
5 the motion.

6 MS. GERARD: All those in favor?

7 MS. HAMSHER: Is there -- I think, is there
8 any discussion?

9 MR. STEIN: This is Bruce. Christina, I'm
10 sorry, I had to cut in and out of the call a little
11 bit.

12 Could I -- and I beg the forgiveness of the
13 other committee members, but I'm not sure that I
14 heard the complete -- what Christina's suggestion
15 was, and, so, in order for me to think about this
16 amendment, I just sort of need to know how it fits
17 into the whole package.

18 MS. SAMES: I made four recommended
19 changes. I recommended that the notice of proposed
20 rulemaking be amended to add the most viable
21 species, to add the most -- to add the aquatically-
22 dependent species and the terrestrial species that
23 are limited in range, to add rare communities, and
24 to finally add the Colonial Water Bird data, which

1 are additional congregation areas.

2 MS. HAMSHER: However, we've decided a
3 motion to do those one by one, Bruce.

4 MR. STEIN: Okay.

5 MS. SAMES: So, we're starting with the
6 most viable --

7 MR. STEIN: Okay, okay. Can I just ask one
8 follow-up?

9 MS. SAMES: Sure.

10 MR. STEIN: In other words, for aquatic
11 dependent and limited terrestrial, it would be all
12 occurrences, not just the most viable?

13 MS. SAMES: That is correct.

14 MR. STEIN: So, the most viable criterion
15 only applies to those things that are not limited --
16 that are terrestrial with not limited ranges?

17 MS. SAMES: The most viable would pertain
18 to all the critically-imperiled, imperiled and
19 terrestrial -- threatened and endangered species
20 that have an EO ranking of A or B.

21 MR. STEIN: Right. But if they are aquatic
22 dependent or limited range and terrestrial, they
23 would be included by those other --

24 MS. SAMES: By the next category, yes.

1 MR. STEIN: Right.

2 MS. SAMES: So, we're breaking these apart.

3 So, under the aquatically-dependent and the limited
4 terrestrial range, it would be adding all of the
5 critically-imperiled, the imperiled and the
6 threatened and endangered species that were either
7 aquatic or aquatically dependent or terrestrial
8 species with limited ranges.

9 MR. STEIN: Right. But regardless of
10 whether the viability of the individual occurrence?

11 MS. SAMES: Correct.

12 MR. STEIN: Yeah. Okay.

13 MS. GERARD: So, there's a motion now.
14 We've been having discussion on most viable
15 elements.

16 MS. EPSTEIN: Okay. This is Lois. Just so
17 people understand, if I vote no on the most viable,
18 it's because I am going to be voting yes on a motion
19 with all candidates because I don't see much
20 difference in the aerial coverage between most
21 viable and all candidates, and it satisfies our
22 ecologist staff more to do that.

23 MS. GERARD: Understood. Can we do the
24 vote now on most viable?

1 MS. SAMES: Yeah. On the vote, I -- do we
2 need to do -- I'm not sure how to do this by
3 conference call. Can we do a --

4 MR. STEIN: I think we have to do a roll
5 call.

6 MS. SAMES: -- roll call? I'm guessing,
7 yeah.

8 So, I'll let Cheryl go through the roll
9 call list, unless you want to hand it to me, Cheryl,
10 and --

11 MS. WHETSEL: Denise.

12 MS. SAMES: How about Denise?

13 MS. HAMSHER: I will read it.

14 MS. SAMES: Do we have Denise vote or is
15 she not on the --

16 MS. WHETSEL: Denise is not on the call,
17 and Joel Kohler is not on the call.

18 MS. SAMES: Okay.

19 MS. WHETSEL: Everyone else on the
20 committee is on the call.

21 MS. SAMES: And Carrie Howell is off the
22 committee, is that right?

23 MS. WHETSEL: That's correct.

24 MS. SAMES: Okay.

1 MS. HAMSHER: Is there any more discussion
2 before we take the vote on just the recommendation
3 for most viable species -- vote on most viable
4 element occurrence?

5 (No response)

6 MS. HAMSHER: Alex?

7 MR. ALVARADO: I agree with the
8 recommendation as proposed.

9 MS. HAMSHER: Michael Epperly?

10 MR. EPPERLY: I agree as proposed.

11 MS. HAMSHER: Lois Epstein?

12 MS. EPSTEIN: No.

13 MS. HAMSHER: Larry Miller?

14 MR. MILLER: I agree as proposed.

15 MS. HAMSHER: O.D. Harris?

16 MR. HARRIS: I agree as proposed.

17 MS. HAMSHER: Willie Jones?

18 MR. JONES: I agree as proposed.

19 MS. HAMSHER: Mary Morgan?

20 MS. MORGAN: Yes.

21 MS. HAMSHER: Ruth Ellen Schelhaus?

22 MS. SCHELHAUS: Yes.

23 MS. HAMSHER: Marilyn Showalter?

24 MS. SHOWALTER: Yes.

1 MS. HAMSHER: David Lopez?
2 (No response)
3 MS. HAMSHER: Is David on the line yet?
4 (No response)
5 MS. HAMSHER: Bruce Stein?
6 MR. STEIN: Yes.
7 MS. HAMSHER: And Denise Hamsher votes yes.
8 The motion passes 10 to 1, is how I counted that.
9 Okay. That's Number 1. Will that process
10 work?
11 MS. SAMES: Yes.
12 MS. HAMSHER: Okay. Let's move along. Is
13 there another motion?
14 MS. SAMES: Denise, I think you have a
15 second motion.
16 MS. HAMSHER: Oh, I might as well do the
17 rare community.
18 MS. SAMES: Right.
19 MS. HAMSHER: The advisory committee
20 recommends that the definition for ecological
21 resource USA be expanded to add "rare community
22 category".
23 MS. GERARD: Is there any discussion?
24 MS. SAMES: Is there a second?

1 MR. HARRIS: I second. This is O.D.
2 Harris.
3 MS. GERARD: Thank you. Is there any
4 discussion?
5 (No response)
6 MS. HAMSHER: Okay. Vote.
7 MS. GERARD: Go ahead, Denise. Read the
8 roll.
9 MS. HAMSHER: Alex?
10 MR. ALVARADO: Yes.
11 MS. HAMSHER: Michael?
12 MR. EPPERLY: Yes.
13 MS. HAMSHER: Larry?
14 MR. MILLER: Yes.
15 MS. HAMSHER: O.D.?
16 MR. HARRIS: Yes.
17 MS. HAMSHER: Got Lois. Okay. Jones?
18 MR. JONES: Yes.
19 MS. HAMSHER: Epstein?
20 MS. EPSTEIN: Yes.
21 MS. HAMSHER: Morgan?
22 MS. MORGAN: Yes.
23 MS. HAMSHER: Schelhaus?
24 MS. SCHELHAUS: Yes.

1 MS. HAMSHER: Showalter?

2 MS. SHOWALTER: Yes.

3 MS. HAMSHER: Lopez?

4 MR. LOPEZ: Yes.

5 MS. HAMSHER: Stein?

6 MR. STEIN: Yes.

7 MS. HAMSHER: Hamsher, yes. The motion
8 carries unanimously, 12 votes that time.

9 Are there further motions to amend the USA
10 definition on the ecological resource?

11 MS. EPSTEIN: Yes. This is Lois. I make a
12 motion to include the Colonial Water Bird data.

13 MS. GERARD: Is there a second?

14 MR. STEIN: This is Bruce Stein. I second
15 that motion.

16 MS. GERARD: Is there any discussion?

17 MS. EPSTEIN: Christina, you talked about
18 it in the last phone call, right?

19 MS. SAMES: Yes.

20 MS. EPSTEIN: I don't know if you want to
21 remind people about it.

22 MS. SAMES: The Colonial Water Bird data or
23 some additional species congregation areas. The --
24 as I mentioned in the last phone call, this is like

1 the EPA Source Water Protection Areas. This is also
2 data that is just being created. It seems to meet
3 the criteria that we have used to include other data
4 and databases.

5 It's national. However, it's only done
6 currently in certain locations. When we went back
7 to our pilot states, we were only able to get
8 information for the Eastern portion of Louisiana.
9 We were not able to get Colonial Water Bird data for
10 Texas or California.

11 So, this is something that would be added
12 as we had it, and hopefully by the time we redo
13 unusually sensitive areas and their maps, the data
14 would be more complete.

15 MS. HAMSHER: This is Denise Hamsher. I
16 have a real concern with including in a definition
17 data that doesn't meet your guiding principles of it
18 being publicly available data and mappable.

19 I guess you just have to appreciate --

20 MS. SAMES: It is mappable, and it would be
21 publicly available.

22 MS. HAMSHER: But is the data readily
23 available throughout the United States? That's what
24 -- what I was hearing is that it wasn't data that

1 was very readily available.

2 MS. SAMES: At the current time, it's only
3 available for portions of the United States. That
4 data is readily available where it is, and -- but
5 it's not complete for the entire U.S.

6 MS. HAMSHER: And what portion of the
7 United States is it fairly available?

8 MS. SAMES: That, I don't know, Denise. I
9 do know that we --

10 MS. HAMSHER: Less than half or more than
11 half?

12 MS. SAMES: I don't know. We looked at the
13 pilot states, and Research Planning, I don't know if
14 you've looked further than the pilot states for the
15 Colonial Water Bird data. If so, could you be kind
16 enough to address that to the advisory committee?

17 MR. ZINGLE: Sure. This is Scott Zingle
18 with RPI. The data's often available for many
19 states, particularly coastal states. It's actually
20 getting it in and getting it organized and trying to
21 compare it statewide can be sometimes difficult.

22 Currently, a national program which is
23 bringing all that together into one centralized
24 database, using the same definitions, the same

1 standards, the same criteria, and will make that
2 much easier. It's not quite available yet, but it
3 will be soon.

4 Now, outside of that or before that's
5 finished, for many states, we will be able to put,
6 you know, appropriate data together to cover that
7 resource.

8 MS. GERARD: Is this --

9 MR. ZINGLE: It's not in all states.

10 MS. GERARD: This is Stacey Gerard. Is
11 this primarily going to be a coastal species or will
12 this be inland birds on rivers?

13 MR. ZINGLE: It'll include inland states as
14 well.

15 MS. HAMSHER: I guess I'm --

16 MS. GERARD: This is Denise Hamsher.

17 MS. HAMSHER: This is Denise Hamsher. I'm
18 groping with why you wouldn't, as important as this
19 may be, why you would not include this as a later
20 date, just why other areas that we haven't yet
21 included in the USA definition, but we also
22 recognize are important, and why you wouldn't delay
23 this to a point where you're assured that the data
24 is in fact readily available throughout the United

1 States.

2 I think one of the concerns I have is kind
3 of the liability that a company will have when you
4 include in a definition a certain area. Because of
5 the lack of data in certain states, it's not mapped
6 by OPS, and yet in theory it's part of the
7 definition, and we're, I think, fairly vulnerable
8 should something happen or should we be challenged
9 on not protecting that area, which is very difficult
10 for a company to do if we don't know the area
11 exists, except by public state and official
12 recognition of the data.

13 So, I -- the concern I have is that I'm not
14 dismissing that it is an important area that might
15 ultimately be included, but until the data is
16 reliable throughout the United States, should it not
17 be in the category of adding later to the USA
18 definition?

19 MS. GERARD: Let me just comment. This is
20 Stacey. I would think that the issue of holding the
21 company responsible is going to be based on whether
22 the data was available at the time that we reviewed
23 your plans, and that, you know, that would be
24 something of an intermittent type of monitoring

1 process, after the initial review, that either the
2 data is available or it isn't available, and if it's
3 not available, then you can't -- we wouldn't be
4 expecting to hold you to compliance, to meet a
5 protection of a definition -- of a population that
6 although defined is not locatable.

7 MS. HAMSHER: This is Denise Hamsher again.
8 Fair enough, but you're not the only agency or
9 court that holds companies liable for certain
10 things.

11 I would agree on enforceability of the
12 integrity management standard, of which the USA
13 definition will be part of, that may be true. I
14 guess I'm concerned about having a USA defined in
15 general but not mapped and having vulnerability to
16 other agencies and/or courts, should something
17 happen in that USA that we weren't -- of a USA that
18 we weren't aware of.

19 MS. GERARD: Couldn't locate.

20 MS. HAMSHER: That we couldn't locate.

21 MS. GERARD: Is there any other discussion?

22 MS. EPSTEIN: This is Lois. I was looking
23 back at some of the peer reviewers' comments, and
24 this was something that they definitely thought was

1 very important, and I think if you look at any of
2 the databases, there are going to be deficiencies
3 and gaps, and where there are -- where there is
4 information about protecting these areas, that's
5 what's going to be on OPS's map.

6 That's why they're actually going through
7 this exercise, because otherwise we could just leave
8 it up to the companies to do all the mapping. So, I
9 would argue that it's important to use what we have
10 and again not let the perfect be the enemy of the
11 good.

12 MR. MILLER: I agree.

13 MS. GERARD: And that was?

14 MR. MILLER: That was Larry Miller.

15 MS. GERARD: Okay. Is there any more
16 discussion on including Colonial Water Bird as part
17 of the definition of USA? Amending it to include
18 that as part of the definition of USA?

19 (No response)

20 MS. GERARD: Denise, could you call the
21 roll on the vote?

22 MS. HAMSHER: I have a process question
23 before we do that. While this is a public meeting,
24 should we just wait for -- we go through the

1 committee and have comments. If there are comments
2 from the public, should they be solicited or can
3 somebody just interject during the discussion period
4 of a motion or should we ask for it?

5 MS. BETSOCK: No one should interject.
6 It's a question of timing. Public comments are
7 allowed by the committee only to the extent of
8 sufficient time.

9 MS. HAMSHER: Okay.

10 MS. BETSOCK: So, you've to judge your
11 time.

12 MS. HAMSHER: Okay.

13 MS. GERARD: And I might say we have a half
14 an hour left.

15 MS. HAMSHER: Let's go through the roll
16 call. The motion -- Lois, maybe you could repeat
17 the motion briefly following -- since we had some
18 discussion, and then we'll take the roll call?

19 MS. EPSTEIN: That Colonial Water Bird data
20 be included.

21 MS. HAMSHER: Okay. Alvarado? How do you
22 say that, Alex? I'm sorry.

23 MR. ALVARADO: Yes, it's Alvarado.

24 MS. HAMSHER: Okay.

1 MS. SAMES: I'm sorry, Denise. Did
2 somebody from the advisory committee just join the
3 call?

4 MR. MOORE: This is Darren Moore at El Paso
5 Energy.

6 MS. SAMES: Okay. Thank you.

7 MS. HAMSHER: Okay. Alvarado?

8 MR. ALVARADO: Could I abstain on this
9 vote? I'm not exactly clear on the issue here.

10 MS. HAMSHER: Okay. Epperly?

11 MR. EPPERLY: No, at this time.

12 MS. HAMSHER: Epstein?

13 MS. EPSTEIN: Yes.

14 MS. HAMSHER: Miller?

15 MR. MILLER: Yes.

16 MS. HAMSHER: Harris?

17 MR. HARRIS: No.

18 MS. HAMSHER: Jones?

19 MR. JONES: No.

20 MS. HAMSHER: Morgan?

21 MS. MORGAN: No.

22 MS. HAMSHER: Schelhaus?

23 MS. SCHELHAUS: Yes.

24 MS. HAMSHER: Showalter?

1 MS. SHOWALTER: Yes.

2 MS. HAMSHER: Lopez?

3 MR. LOPEZ: Before we vote, is it possible
4 to have a little more discussion as to the no votes?

5 MS. GERARD: No. We're in the vote.

6 MR. LOPEZ: Then I have to vote no.

7 MS. HAMSHER: Stein?

8 MR. STEIN: Yes.

9 MS. HAMSHER: Hamsher, no. I did six to
10 five with one abstain for that recommended
11 amendment.

12 MS. EPSTEIN: Who's the six?

13 MS. HAMSHER: The nos. I'm sorry. Six
14 nos, five yeses, Alvarado abstained.

15 MS. GERARD: So, it was six nos, five
16 yeses, and one abstention?

17 MS. HAMSHER: That's how I counted. Is
18 that --

19 MS. EPSTEIN: And Dave Lopez, you're
20 definitely voting no?

21 MR. LOPEZ: Yes, that's correct, I am
22 voting no.

23 MS. HAMSHER: Can we -- is there further
24 motions to amend the ecological resource --

1 MR. STEIN: This is Bruce Stein. I move
2 that -- and I'm not sure if we should separate these
3 out or they can be put together, but move to include
4 all aquatic-dependent, imperiled or T&E species,
5 aquatically-dependent and limited terrestrial range
6 for imperiled, critically-imperiled and T&E species.

7 MS. GERARD: Is there a second?

8 MS. EPSTEIN: Yes. Lois.

9 MS. GERARD: Okay. Discussion? Christina,
10 you want to remind them what that includes?

11 MS. SAMES: What that includes are the
12 critically-imperiled species, the imperiled species,
13 and the threatened and endangered species that are
14 either aquatic or aquatically-dependent or are
15 terrestrial species that have a very limited range,
16 and by limited range, we're talking five acres or
17 less.

18 MS. HAMSHER: And this is Denise Hamsher.
19 Since we had a motion to add most viable element
20 occurrence, and you'll have to excuse me for dumb
21 questions, what in this category, what in Bruce's
22 amendment would be new and over and above what would
23 be included in most viable element occurrence,
24 specifically?

1 MS. SAMES: The commentators who recommended
2 that we include this stated that because the --
3 because of the vulnerability, the increased
4 vulnerability of these species that are aquatic or
5 are terrestrially limited, meaning that if there
6 happened to be a spill, it would be very hard for
7 these particular species to -- or impossible for
8 them to get out of the way, that they would be
9 impacted, that they were more vulnerable to
10 contamination, and that because they're already a
11 sensitive species, because they're already
12 critically imperiled or already imperiled or they're
13 already threatened and endangered, that we should
14 consider including them.

15 We've also had discussion on -- from
16 various people that when they looked at the model
17 that we were proposing, we heard a lot of times
18 that, well, that gets most of the things that we're
19 concerned about, but there's this particular hot
20 spot area that is very limited, and this isn't going
21 to get them because it's not a multi-species
22 protection area or it's not a critically-imperiled
23 species.

24 Therefore, it's not -- and there's not more

1 than one of them to -- it's not a WSMA or Ramseur
2 site. So, we're not hitting them with the notice of
3 proposed rulemaking.

4 So, including the aquatically-dependent and
5 the limited terrestrial gets those particular types
6 of species, and with --

7 MR. HARRIS: This is O.D. Harris.

8 MS. BETSOCK: Could you speak up, please?

9 MS. SAMES: The question was, for those of
10 you who may not have heard, what are we missing when
11 we don't include the aquatically-dependent and
12 limited terrestrial species if we have already voted
13 to pick up the most viable species?

14 What we would be missing are the species
15 that do not have an EO rank of A or B that are
16 either aquatic, aquatic dependent or limited
17 terrestrial, that are critically -- that are an
18 imperiled species or a threatened or endangered
19 species because in the notice of proposed
20 rulemaking, we were automatically including all
21 critically-imperiled species.

22 So, we would get all of those still. So,
23 what we would be missing are the imperiled species
24 or the threatened and endangered species that do not

1 have an EO ranking of A or B that are aquatically
2 dependent or limited terrestrial.

3 MR. STEIN: Christina, this is Bruce Stein.

4 If I could try and phrase it in a different way,
5 because I actually think that that most viable
6 criterion actually works -- only works juxtaposed
7 against something like this.

8 I mean, the populations, I think, that
9 we're most concerned about being vulnerable to
10 spills are those that are either in the aquatic
11 environment or have such a limited terrestrial
12 range, that, you know, if there's a spill that
13 occurs there, the organism is not, you know, found
14 elsewhere or not able to move elsewhere, and I think
15 that that most viable criterion is actually -- only
16 makes sense as a way then to ensure that the best
17 examples of those things that are not aquatic
18 dependent or limited in range also have some
19 representation in this model.

20 So, to me, the most viable criterion is not
21 sort of the lead criterion. It's really that the
22 follow-up criterion that's the safety net. This is
23 -- the aquatic and limited range terrestrial
24 provides sort of the primary safety net, and then

1 that most viable criterion really just is to ensure
2 that some of those things that are wide-ranging are
3 covered, but that we
4 -- that it's not necessary to cover every place that
5 they are found but only sort of the best examples.

6 But if I could ask as a follow-up on that,
7 Christina, you mentioned that five acres is the
8 definition used for limited range terrestrial.
9 Could you elaborate on how that number was arrived
10 at?

11 MS. SAMES: Well, what we did was we looked
12 back at the ranges, looked at the Louisiana, the
13 Texas and the California data sets, ecological data
14 sets, and when we -- because we thought maybe by
15 looking at those data sets, we would find a natural
16 cut-off for limited, and what we found was five
17 acres.

18 MR. STEIN: Are you referring to five acres
19 for the population or five acres range for the
20 species? Those are two very different things.

21 MS. SAMES: And I'm going to ask punt that
22 one to Scott over at RPI.

23 MR. ZINGLE: Sure. This is Scott. That
24 the range of an individual, not the population as a

1 whole.

2 MS. SAMES: Oh, good. That's what I was
3 going to answer, but I'm glad you're on the line
4 anyways.

5 MS. GERARD: So, that's kind of a mobility
6 gauge, that it can't move? That the species can
7 move five acres? The individual can make -- can
8 travel five miles -- five acres? Is that --

9 MS. SAMES: No more than.

10 MS. GERARD: No more than.

11 MS. SAMES: Right.

12 MS. GERARD: So, it's low mobility.

13 MS. SAMES: So, you're basically picking up
14 the plants that can't move, and --

15 MR. ZINGLE: Very small, like burrowing
16 mammals, and certain birds that have greater
17 restricted home ranges, that sort of thing.

18 MS. HAMSHER: And how available is this
19 data? Because my experience -- I'm going to jump to
20 instead of an aquatic defendant to Bruce's reference
21 to T&E.

22 We have constructed pipelines where we,
23 because of the nature of environmental permits on
24 new construction, had to do threatened and

1 endangered. That information was not readily
2 available from the state. We had to seek that and
3 identify it ourselves.

4 So, again, I'm not at all convinced, based
5 on our experience, that this information is very
6 readily available.

7 MS. SAMES: The data for the Friends of
8 Endangered Species -- we've worked out a contract
9 with the Nature Conservancy and the Heritage
10 Programs to obtain the ecological data that we need
11 to run the model.

12 It includes the critically-imperiled data,
13 the imperiled data, and the threatened and
14 endangered species data.

15 MS. HAMSHER: Okay. The other question I
16 have is on most viable species. Isn't there a range
17 built into that so we're kind of being redundant on
18 the terrestrial, on the most viable?

19 MS. SAMES: I'm just going to read what we
20 obtained from the Nature Conservancy and the
21 Heritage Programs.

22 "The EO Rank describes the quality,
23 condition and viability of the occurrence", and they
24 provide rankings on the quality, condition and

1 viability with A meaning excellent quality and B
2 meaning good quality.

3 They also have Cs, Ds, Hs and Xs to explain
4 the viability, the quality and the condition.

5 MS. HAMSHER: Okay.

6 MS. GERARD: The impression I have from
7 what Bruce was saying was that the reason why the
8 people who participated in the review recommended
9 this was the true vulnerability of these species,
10 that these species need help more than the most
11 viable species by virtue of the fact that they
12 cannot relocate or move or get out of the way.
13 That's the impression that I got.

14 MS. HAMSHER: And I guess the question I
15 have is that the current model has some radiuses
16 built in, and then what you're talking about is the
17 species in there and again including a radius for
18 them, and that's where I'm having a hard time.
19 Isn't that redundancy?

20 MS. GERARD: Could there be redundancy
21 within?

22 MS. SAMES: The current model provides
23 buffers based on whether the species is a land
24 species or an aquatic species.

1 MS. HAMSHER: And that buffer for aquatic
2 is five --

3 MS. SAMES: Five miles, and terrestrial is
4 one mile, and we provided the various buffers -- you
5 are correct -- to add in an extra safety net for the
6 species that were more vulnerable, meaning the
7 aquatic species.

8 It doesn't completely address this -- we
9 haven't separated the terrestrial species between
10 those that could possibly move and those who can't
11 that are stuck in a limited area.

12 MS. GERARD: So, it could be redundant, but
13 it would be redundant within the buffers of areas
14 that are already identified. I mean, would you
15 describe this as a safety net for these species,
16 that it's a safety net within what might be already
17 a covered area?

18 MR. ZINGLE: Christina, this is Scott at
19 RPI. Could I jump in?

20 MS. SAMES: Sure. Jump in, Scott.

21 MR. ZINGLE: It's a little bit different
22 than the two ways you're thinking about this. The
23 different site buffers used for aquatic versus
24 terrestrial species and building the maps, that is

1 known as the area protected, but it doesn't
2 necessarily contribute all that much to whether or
3 not that particular species or occurrence will get
4 protected, whereas what Christina's proposing here
5 is you're making the decision based on the type of
6 species it is.

7 Does it get protected, yes or no? If
8 aquatic, yes. Then after that part, the actual
9 buffer would come in. This species is one we're
10 going to protect at this location. We're going to
11 apply a five-mile buffer to protect that species.
12 It's kind of like one's an on or off, one's like an
13 on switch for aquatic species to protect them, and
14 the second part, the buffer, is actually defining
15 the area to be protected.

16 Does that help at all? We've built in
17 five-mile buffers as the area around a location
18 where we have an occurrence for an aquatic species.

19 As it stands now without this filter or without
20 this added-on criteria, that site might still not
21 get protected at all.

22 MS. BETSOCK: Is that still Scott?

23 MS. GERARD: Yes, that's still Scott. I
24 think one of the things that's important about this

1 one, talking as the most lay person in the room,
2 that's Stacey, for all those people who are
3 concerned about spills and water and feel that all
4 water should be protected, that this is the best
5 defense we have to that argument, that we're not
6 protecting all water. We're still not
7 protecting all water, but we are protecting really
8 important things that live in the water. So that
9 those places where really important things live,
10 you're being sure that we provide protection to
11 those areas. So, that's, you know, why I hope that
12 you favorably consider this amendment.

13 MR. STEIN: Yes. This is Bruce Stein. I
14 would have to say that of all of the amendments that
15 we're talking about, these aquatic-dependent and
16 limited range terrestrials from my perspective are -
17 - this is the most important of these criteria. The
18 data is there. These are in fact the species and
19 the species populations that are at greatest risk to
20 spills.

21 I would say that the most viable criterion
22 which we discussed earlier is secondary to these
23 things because from my perspective, you know, even
24 in the aquatic realm and the limited terrestrial

1 realm, these are so rare, that even those
2 occurrences that are not the best in viability are
3 still significant, and in fact, those are probably
4 even more at risk of being affected by spills.

5 MS. HAMSHER: This is Denise Hamsher again.
6 Bruce, I couldn't begin to, I think, challenge your
7 expertise on their sensitivity. That's not my
8 point.

9 My point is (1) is it redundant, and I
10 heard a little --

11 MS. GERARD: It might be.

12 MS. HAMSHER: It might be, but the second
13 thing is, is again we fall back to the basic
14 question or guiding principle. Is this information
15 readily available and mappable throughout all of the
16 United States, and if it's not, let's add it later
17 when it is?

18 MR. STEIN: Well, I can answer that. The
19 information is readily available, and as Christina
20 said, you know, they've already arranged for a
21 process to obtain that information in map form, and
22 in my view, it is not redundant with that most
23 viable criterion. It's complementary. That's the
24 entire reason that most viable criterion was

1 proposed, was as a complement to this, and, so, if
2 you were going to be concerned about eliminating,
3 you know, redundancy or complementarity, this is --
4 this aquatic dependent and limited terrestrial is
5 the core that should be -- should in my view be
6 included.

7 The most viable criterion would be the
8 criterion that if you wanted to have a discussion
9 about whether, you know, there's any complementarity
10 or redundancy to discuss, that would be more of an
11 issue for that one than for these.

12 MR. ZINGLE: This is Scott Zingle at RPI
13 again, and I would say just to answer the question
14 about the data being available, the information is
15 available. It's readily available to address this
16 addition.

17 MS. GERARD: I think we should move to the
18 vote.

19 MS. HAMSHER: I guess I -- this is Denise
20 Hamsher. I -- the information I have on that is not
21 that this information is not readily available.

22 Can I ask -- Michael Macrander, who was
23 involved as one of the industry reps on the USA
24 project, I believe is on the phone. I just --

1 before I vote, I just need to clarify what I'm
2 hearing as discrepancy about the extensiveness of
3 this data available.

4 Can I ask Michael to comment?

5 MR. MACRANDER: May I?

6 MS. HAMSHER: Yes, can you?

7 MR. MACRANDER: Okay. I think it's a
8 matter of semantics here. First of all, the
9 definition has not been established to identify what
10 is a limited range species, and we came up with a
11 classification system to identify aquatic-dependent
12 species that was for a very different application.

13 I think that before we would consider
14 either of these, we would need to establish a
15 definition of what these two are, and those
16 definitions do not exist. To my knowledge, they do
17 not exist in the Heritage data set.

18 They have been created sort of on the fly
19 in the last few weeks to do this analysis.

20 MS. SAMES: Michael, I got that there's no
21 current definition for limited range. What was the
22 other point, though?

23 MR. MACRANDER: The aquatically-dependent -
24 - actually, there's not a clear definition for that.

1 There's not a definition of it that I know of in
2 the Heritage network, you know, and Bruce asked what
3 the definition was that was used for the limited
4 range, and that just underscores my point.

5 MS. GERARD: But are we proposing to define
6 it in this definition for this purpose?

7 MS. HAMSHER: I think we're proposing to
8 include something that's not defined in the USA
9 definition. That's my line of inquiry and
10 discomfort.

11 MS. GERARD: I thought we were defining it
12 in this definition, and by Christina's answering the
13 five acres is what she was recommending we define it
14 to be.

15 MS. SAMES: Correct, and it could be up to
16 the committee if they were not happy with what we've
17 proposed for the limited range, and I'm sure that
18 the committee can provide a caveat as to what they
19 mean by the limited range.

20 MS. GERARD: So, we're proposing it to
21 include it in the definition, and we're proposing to
22 contract define the species that meet the definition
23 as Christina's describing it albeit a new
24 definition.

1 MS. HAMSHER: And I think going back to the
2 guiding principle, it's a generally-accepted
3 scientific definition that should be the principle,
4 not one that we frankly, with the exception perhaps
5 of Bruce and a couple of others on the phone, aren't
6 prepared to do that definition.

7 If it's generally accepted in the
8 scientific community, I think then, of course, this
9 is an area that Bruce appropriately recognizes as
10 sensitive, but until such time, I have discomfort,
11 and just to explain my vote, that's why, not that I
12 don't think it's sensitive, just that I don't think
13 we're ready yet to include it in the definition.

14 MS. SAMES: Another way to -- for the
15 committee members that might be uncomfortable with
16 the term "limited range", when we looked at our five
17 acres, what we primarily ended up with were all
18 plants and all invertebrates.

19 So, the -- I'll punt back to the committee
20 that the committee, if various members of the
21 committee were unhappy with the Office of Pipeline
22 Safety creating a definition for limited range, it
23 could be proposed that instead of using the term
24 "limited range", we say all plants and

1 invertebrates, which would be the terrestrial
2 species.

3 MS. HAMSHER: And that underscores my
4 point. We do not have a commonly-accepted public
5 definition of this --

6 MS. SAMES: I don't think --

7 MS. HAMSHER: -- throughout the states and
8 federal in order to uniformly apply the definition
9 and thus mapping throughout the United States. If
10 we're making up --

11 MS. GERARD: I repeat that if we are making
12 it up, and I guess we are making it up, we're
13 proposing it to you for how we would make it up, and
14 then we're contracting with an organization to put
15 it on the map.

16 So, what you would see is what's on the map.

17 MS. HAMSHER: I would suggest that that is
18 a more appropriate process for peer review and a
19 future rulemaking, to expand the USA.

20 MR. STEIN: I would -- if I could address
21 the issue of common scientific understanding of what
22 these things mean, if we could separate the limited
23 terrestrial from aquatic and aquatic-dependent?

24 There in fact has been a lot of work done

1 on defining what's meant by aquatic and aquatic-
2 dependent. EPA has done work on this for their use
3 and environmental indicators and in fact mapping out
4 indicators by watersheds across the country, and I
5 think that there's certain classes of organisms,
6 like fishes and crayfishes and mussels, where there
7 is just absolutely no question of what aquatic
8 means.

9 There are certain information sources, such
10 as the National Wetlands Inventory, that identifies
11 for plants the percentage of a plant's life cycle
12 that it depends on water, and, so, in fact, there
13 has been some pretty good communitywide
14 categorization of what this aquatic-dependent,
15 aquatic and aquatic-dependent means.

16 I think that, you know, the limited range
17 terrestrial is an area where there will need to be
18 some, you know, delineation, and that's why I was
19 interested in what their proposal was, but I think
20 that it's not something -- the concept itself is not
21 up for scientific debate, precisely how you define
22 that limited range terrestrial, but on the aquatic
23 and aquatic-dependent side, it's not as much of an
24 issue as I think it's being suggested.

1 MS. SAMES: And once again, the five acres
2 was based on our analysis of the three data sets
3 that we had during the pilot test in reviewing the
4 information on the terrestrial species. So, we
5 think it's a good threshold, and, yes, we agree that
6 it would have to be added as a definition to this,
7 but to be honest, I don't think this is a huge
8 point.

9 MS. EPSTEIN: This is Lois. I have a
10 comment, which is, I think the point Denise is
11 making is fairly interesting in that I'm going to
12 propose that we consider all candidates, and, you
13 know, if you want a definition that has been around
14 for a long time, to be consistent, you might be
15 saying that all candidates are the way we should be
16 moving because, you know, this was proposed to
17 narrow the scope.

18 So, I think that's something that ought to
19 be considered.

20 MS. GERARD: We've had a lot of discussion
21 on this one item. I think we should close the
22 discussion and vote on it. It was as a package,
23 aquatically-dependent and limited terrestrial range
24 species. It's a quarter of 1.

1 MS. HAMSHER: Actually, Bruce, would you
2 repeat your motion? What my notes had you move that
3 you wanted to include the aquatic-dependent limited
4 range T&E and imperiled.

5 MS. SAMES: Well, the critically-imperiled
6 are already automatically included under the notice
7 of proposed rulemaking.

8 MS. HAMSHER: Critically-imperiled.

9 MS. SAMES: Yes.

10 MS. HAMSHER: Would you repeat your motion?

11 MR. STEIN: My motion was to -- that the
12 aquatically-dependent and limited range terrestrial
13 candidates be included in this.

14 It sounds from the discussion as though if
15 I were to make that motion over, I would probably
16 suggest a separate discussion and vote on each of
17 those, but the motion is on the table, yes.

18 MS. GERARD: Well, it was your motion, and
19 it has to be voted on that way now?

20 MR. STEIN: I don't know. You -- someone
21 needs to tell me.

22 MS. GERARD: You want to repackage your
23 motion?

24 MS. EPSTEIN: We can vote on it and then

1 revote separately, if we need to.

2 MS. SAMES: Let's do that.

3 MS. GERARD: Okay.

4 MS. HAMSHER: Let's vote on Bruce's motion.

5 We have a motion and a second, I believe.

6 MS. GERARD: Yes.

7 MS. HAMSHER: Alvarado?

8 MR. ALVARADO: Yes.

9 MS. HAMSHER: Epperly?

10 MR. EPPERLY: No.

11 MS. HAMSHER: Epstein?

12 MS. EPSTEIN: Yes.

13 MS. HAMSHER: Miller?

14 MR. MILLER: Yes.

15 MS. HAMSHER: Harris?

16 MR. HARRIS: I'm going to abstain.

17 MS. GERARD: What was that?

18 MR. HARRIS: I'm going to abstain from the

19 vote.

20 MS. HAMSHER: Jones?

21 MR. JONES: No.

22 MS. HAMSHER: Morgan? Morgan?

23 (No response)

24 MS. HAMSHER: They might be actually

1 cutting out.

2 MS. GERARD: Morgan?

3 MS. HAMSHER: Mary Morgan?

4 MS. MORGAN: No.

5 MS. GERARD: What?

6 MS. MORGAN: No.

7 MS. HAMSHER: Okay. Sorry.

8 MS. GERARD: Lost you there.

9 MS. MORGAN: Okay.

10 MS. HAMSHER: Schelhaus?

11 MS. SCHELHAUS: Yes.

12 MS. HAMSHER: Showalter?

13 MS. SHOWALTER: Yes.

14 MS. HAMSHER: Lopez?

15 MR. LOPEZ: Yes.

16 MS. HAMSHER: Stein?

17 MR. STEIN: Yes.

18 MS. HAMSHER: Hamsher, no. We have one

19 abstain, seven yeses and four nos, I think is how I

20 added.

21 MS. GERARD: Somebody turned on a radio

22 somewhere.

23 MS. HAMSHER: I think we're on hold.

24 MS. GERARD: What does that mean? Are we -

1 -

2 MS. HAMSHER: Somebody put us on hold, and
3 we're listening to Muzak. Change it to jazz. Let's
4 talk over it. There's nothing we can do except keep
5 --

6 MS. GERARD: Okay.

7 MS. HAMSHER: -- talking over it.

8 MS. GERARD: All right. Let's pretend
9 we're in an elevator.

10 MS. HAMSHER: Is there any other motions to
11 amend or change the ecological resource part of the
12 definition for USA?

13 MS. EPSTEIN: Yes. This is Lois. I make a
14 motion that we include all candidates, critically-
15 imperiled, imperiled and threatened and endangered.
16 The definitions are well established, and they're
17 clearly available throughout the country as well as
18 ecologically, it's the most affordable strategy.

19 MS. HAMSHER: Could you repeat exactly what
20 you mean by "all candidates"? It's --

21 MS. EPSTEIN: If you look down on the
22 chart, that's how it was characterized by OPS, where
23 there would be no essentially filters. There
24 wouldn't be any breakdowns for any particular

1 species as being less important to ensure their
2 viability.

3 MS. GERARD: This music adds an interesting
4 note to this meeting.

5 MR. STEIN: Got to be a conspiracy.

6 MS. HAMSHER: One of the problems I have is
7 that having all candidates is in direct opposition
8 to the notice of proposed rulemaking, which --

9 MR. ZINGLE: Do we have a second?

10 MS. HAMSHER: I'm sorry. You're right. Do
11 we have a second to that?

12 MS. EPSTEIN: For purposes of discussion,
13 Ruth?

14 MS. SCHELHAUS: Yes, I'll second it.

15 MS. HAMSHER: Who was that?

16 MS. GERARD: Ruth.

17 MS. HAMSHER: I'm sorry. By making this
18 motion, you are in essence saying that the notice of
19 proposed rulemaking is not appropriate because the
20 notice of proposed rulemaking narrows the definition
21 to be unusual or irreparable harm.

22 By expanding to all candidates, I think
23 it's a vote against the notice of proposed
24 rulemaking.

1 MS. EPSTEIN: No, no. I think by voting,
2 we were accepting the notice of proposed rulemaking
3 if the following changes were made, and when I did
4 discuss the analyses that were done with our
5 ecologists, this was the decision that we developed
6 as an organization.

7 He actually went on to say that the peer
8 reviewers could not for a variety of reasons, but he
9 had committed to helping us study the issues, and I
10 think one thing that may be helpful for people is to
11 look at our chart, what we actually did just vote
12 for.

13 We voted for including most viable and
14 aquatic-dependent/limited range species. The
15 percentage of land we're talking about there is 3.9,
16 16.8 and 21.5. What I was proposing is 4.2 instead
17 of 3.9, 17 instead of -- 17 to 18 instead of 17, and
18 24 versus 22.

19 So, we're not talking about a vast
20 expansion by any means.

21 MS. HAMSHER: Is there any other
22 discussion?

23 (No response)

24 MS. HAMSHER: Let's take a roll call vote.

1 Alvarado?

2 MR. ALVARADO: I'll abstain on this vote.

3 MS. HAMSHER: Epperly?

4 MR. EPPERLY: No.

5 MS. HAMSHER: Epstein?

6 MS. EPSTEIN: Yes.

7 MS. HAMSHER: Miller?

8 MR. MILLER: Yes.

9 MS. HAMSHER: Harris?

10 MR. HARRIS: No.

11 MS. HAMSHER: Jones?

12 MR. JONES: No.

13 MS. HAMSHER: Morgan?

14 MS. MORGAN: No.

15 MS. HAMSHER: Schelhaus?

16 MS. SCHELHAUS: Yes.

17 MS. HAMSHER: Showalter?

18 MS. SHOWALTER: Yes.

19 MS. HAMSHER: Lopez?

20 MR. LOPEZ: Yes.

21 MS. HAMSHER: Stein?

22 MR. STEIN: Abstain.

23 MS. HAMSHER: Hamsher, no. We have five

24 yes votes, five no and two abstentions. I have --

1 the only other -- I believe that there was another
2 recommendation, and if my memory on these amendments
3 is right, we still have not addressed the multi-
4 species area.

5 The notice of proposed rulemaking had
6 proposed it as an intersection of three, and, so, --
7 okay.

8 MS. GERARD: So, I believe this concludes -
9 -

10 MS. EPSTEIN: Actually, no. I have one
11 more.

12 MS. GERARD: Oh, you have one more? Okay.
13 We still have to do Water.

14 MS. EPSTEIN: It has to do with vulnerable
15 species, which we have not had an analysis on, and
16 I'm not sure again how to phrase this, but I guess
17 what I would phrase this as we're asking OPS to
18 include in the final rule the option of in the
19 future including vulnerable species.

20 MS. WHETSEL: That was Lois Epstein.

21 MS. EPSTEIN: I may not have phrased that
22 right. I may need some help, but essentially I
23 would like the preamble to have discussion on
24 vulnerable species and to include that as a

1 possibility of later -- for later inclusion.

2 MS. SAMES: And, so, not in the current USA
3 final rule, but in a subsequent rule, is that
4 correct?

5 MS. EPSTEIN: Right.

6 MS. HAMSHER: Do we want to make this
7 separate in our series of motions before accepting
8 the rule as is or do you want to hold the rule until
9 this issue is resolved? Is that what you're
10 recommending, Lois?

11 MS. EPSTEIN: Well, I don't know exactly
12 what all the options are, but I would like it to be
13 part of the final rule, the recommendation that OPS
14 review including the vulnerable species in the
15 future.

16 MS. GERARD: You want in the preamble us to
17 discuss that?

18 MS. EPSTEIN: If we can't get it in the
19 actual final rule, which I suspect is the case, that
20 is the standard at this point, then I'm making a
21 recommendation for a future rulemaking.

22 MS. SCHELHAUS: This is Ruth. I actually
23 have where I can't support the current USA rule
24 unless there's like a simultaneous proposed rule

1 that addresses the national and cultural resources
2 as USAs at the same time you bring out the final
3 rule.

4 MS. GERARD: Well, we haven't started it
5 yet. So, we couldn't possibly do that.

6 MS. SCHELHAUS: Because you haven't
7 addressed them at all in your IG's report on DOT's
8 rulemaking, how long you've taken to do stuff, and
9 whether you'd really get it through, even though you
10 say you're going to do it in the future.

11 I know when we did the hazardous
12 consequence, you've at least put on the books or on
13 the web that you're going to do certain rulemakings.

14 MS. SAMES: If we --

15 MS. SCHELHAUS: You have just kind of left
16 it there, that there's nothing concrete to say that
17 you for sure are going to do it. I want a proposed
18 rule addressing the natural and cultural, whatever
19 is left out.

20 MS. SAMES: Ruth Ellen, you said that you
21 wanted us to hold this. Let me repeat what I
22 thought I heard you say.

23 I thought I heard you say that you would
24 vote to hold the USA final rule until we could

1 create a notice of proposed rulemaking that would
2 address other important resource areas, is that
3 correct?

4 MS. SCHELHAUS: Yes.

5 MS. SAMES: Okay. And I'm assuming that
6 you realize that in order to create a notice of
7 proposed rulemaking on these other areas, it would
8 be impossible to do that between now and the end of
9 the year.

10 MS. HAMSHER: Actually, I would like a
11 point of order. We have two kind of motions out
12 there. Can we finish up on Lois's motion on the
13 vulnerable species recommendation, and then go to
14 Marilyn's comment on the further expansion -- I'm
15 sorry -- Ruth Ellen, further expansion beyond
16 drinking water and ecological that are here before
17 us?

18 Lois, could you rephrase your motion? We
19 don't have a second of that?

20 MS. EPSTEIN: I'm making a motion that OPS
21 include in the preamble language that it intends to
22 consider in the future including vulnerable species
23 in the rulemaking.

24 MS. GERARD: Is there a second?

1 MR. LOPEZ: I second it. This is David.
2 Stacey, this goes to what I think the conversations
3 we have had in the past, --

4 MS. GERARD: Right.

5 MR. LOPEZ: -- and I think it's good.

6 MS. GERARD: Okay. There's a second. Is
7 there any more discussion?

8 (No response)

9 MS. HAMSHER: And I just need to clarify,
10 Lois. You're just talking about you are urging OPS
11 to consider in the preamble. You're not having them
12 hold up the rule?

13 MS. EPSTEIN: Right.

14 MS. HAMSHER: Okay.

15 MS. EPSTEIN: That's correct.

16 MS. HAMSHER: How they're going to deal
17 with vulnerable species. Okay.

18 MR. LOPEZ: Well, if I can, I mean, Lois,
19 maybe what we can do is make it a little stronger
20 and say that this should be addressed in the
21 preamble.

22 MS. HAMSHER: Are you making an amendment
23 to her motion?

24 MR. LOPEZ: I don't know. I'm suggesting.

1 MS. EPSTEIN: That's fine. I'd be happy to
2 amend it.

3 MS. HAMSHER: O.D., you're going to have to
4 speak up.

5 MR. HARRIS: This is O.D. The concept is
6 good either way.

7 MS. GERARD: Okay.

8 MS. HAMSHER: Okay. Can we just take a
9 vote on the motion that's on the floor then?

10 MS. GERARD: That OPS would include in the
11 preamble our intention to have future rulemaking
12 including vulnerable species, adding vulnerable
13 species, to the USA definition.

14 MS. HAMSHER: Intention to add or intention
15 to consider adding?

16 MS. GERARD: That's all it could be is an
17 intention to consider.

18 MS. HAMSHER: Okay. Alvarado?

19 MR. ALVARADO: Yes.

20 MS. HAMSHER: Epperly?

21 MR. EPPERLY: Yes.

22 MS. HAMSHER: Epstein?

23 MS. EPSTEIN: Yes.

24 MS. HAMSHER: Miller?

1 MR. MILLER: Yes.
2 MS. HAMSHER: Harris?
3 MR. HARRIS: Yes.
4 MS. HAMSHER: Jones?
5 MR. JONES: Yes.
6 MS. HAMSHER: Morgan?
7 (No response)
8 MS. HAMSHER: Mary?
9 MS. MORGAN: Yes.
10 MS. HAMSHER: Schelhaus?
11 MS. SCHELHAUS: Yes.
12 MS. HAMSHER: Showalter?
13 MS. SHOWALTER: Yes.
14 MS. HAMSHER: Lopez?
15 MR. LOPEZ: Yes.
16 MS. HAMSHER: Stein?
17 MR. STEIN: Yes.
18 MS. HAMSHER: Hamsher, yes. That motion
19 passes by unanimous.
20 Ruth Ellen, we had a discussion that headed
21 toward a motion from you. Can you phrase that in
22 the way of a motion?
23 MS. SCHELHAUS: My motion would be that OPS
24 has to propose a proposed rule that addresses the

1 natural and cultural resources that they have not
2 addressed in this final, in the current proposed
3 rule, when they issue the final rule that they pass,
4 that there's something -- a commitment other than
5 yes, we intend to consider.

6 MS. GERARD: It's not --

7 MS. SCHELHAUS: This would show a
8 commitment that, yes, they have -- they will follow
9 through.

10 MS. GERARD: Ruth Ellen, it would not be
11 physically possible for us to have an NPRM since we
12 haven't got anything drafted yet that would be able
13 to be done at the time that we would publish this
14 final rule.

15 The only thing that we can legally do is
16 have a commitment in the preamble to do so, and
17 there is already a commitment in the preamble that
18 we would look at other sensitive areas. That was in
19 the preamble to the NPRM, I believe.

20 MS. SCHELHAUS: But you've been saying that
21 for several years. It's been --

22 MS. GERARD: Not in writing.

23 MS. SCHELHAUS: -- It was in the draft all
24 the way back in like '94 to '96 from EPA and the

1 Department of Interior.

2 MS. HAMSHER: Can we --

3 MS. GERARD: We have to get this one done,
4 then we can move on, but we have to get this one
5 done before we can go on to that one.

6 MS. HAMSHER: Maybe we can second this and
7 then have some discussion.

8 MS. GERARD: Right. Okay.

9 MS. HAMSHER: Is there a second to Ruth
10 Ellen's motion?

11 MR. MILLER: This is Larry Miller. I
12 second it.

13 MS. HAMSHER: Is there -- now, sorry to
14 interrupt. Is there a discussion?

15 MS. SHOWALTER: This is Marilyn Showalter.
16 I would be inclined to vote against this. The
17 reason is that it seems to me that it begins to
18 cloud this rule with another rule, and I actually
19 feel that a little bit on the previous vote.

20 I feel we should be voting on what ought to
21 be in this rule, and if there -- rather than
22 conditions precedent to the rule that exists outside
23 the parameters of the rule. So, I think I'd vote
24 against it. There's no comment on whether it's a

1 good idea or a bad idea to have another rule.

2 MR. LOPEZ: This is David Lopez from EPA.
3 You know, I think I disagree with the -- with Ruth's
4 position. I mean, I think it's an area that needs
5 to be addressed, but at the same time, to hold this
6 rule up until OPS has come up with an advanced
7 notice of proposed rulemaking to address the
8 cultural resources which we in EPA also hold to be
9 vital and should be protected, I'm not sure that
10 it's really the best way to go in this case.

11 I think that if we can reach agreement on
12 the current proposed rule, we'll be better off. We
13 do have the commitment, and I think through this
14 committee, we'll have the -- excuse the language --
15 but hammer to make sure that OPS doesn't forget the
16 need to address the cultural resources in the
17 future.

18 MS. HAMSHER: Anything further?

19 MS. GERARD: Any further discussion?

20 (No response)

21 MS. HAMSHER: Let's do a roll call.

22 Alvarado?

23 MS. EPSTEIN: Can you repeat the motion?

24 MR. STEIN: Yes, please.

1 MS. HAMSHER: Ruth Ellen, would you please
2 repeat your motion?

3 MS. SCHELHAUS: My motion is that a
4 simultaneous proposed rule that addresses the
5 natural and cultural resources be issued at the same
6 time as the final rule.

7 MS. HAMSHER: And Miller had seconded it.
8 Let's take a vote. Alvarado?

9 MR. ALVARADO: No.

10 MS. HAMSHER: Epperly?

11 MR. EPPERLY: No.

12 MS. HAMSHER: Epstein?

13 MS. EPSTEIN: No.

14 MS. HAMSHER: Miller?

15 MR. MILLER: Yes.

16 MS. HAMSHER: Harris?

17 MR. HARRIS: No.

18 MS. HAMSHER: Jones?

19 MR. JONES: No.

20 MS. HAMSHER: Morgan?

21 MS. MORGAN: No.

22 MS. HAMSHER: Schelhaus?

23 MS. SCHELHAUS: Yes.

24 MS. HAMSHER: Showalter?

1 MS. SHOWALTER: No.

2 MS. HAMSHER: Lopez?

3 MR. LOPEZ: No.

4 MS. HAMSHER: Stein?

5 MR. STEIN: No.

6 MS. HAMSHER: Hamsher, no. I record two
7 yes, 10 no for that motion.

8 Are there other -- any other motions to
9 amend the ecological part of the USA definition?

10 We still have to move on to Drinking Water.

11 MS. SCHELHAUS: This is Ruth. I have one
12 more to support the DOI comment, and it was
13 supported by other people to expand USAs to include
14 all units of the national forest system.

15 MS. SAMES: It would be outside of the
16 scope of the notice of proposed rulemaking.

17 MS. HAMSHER: Would it not be included in
18 your prior motion to do cultural resources?

19 MS. SAMES: Yes, it would be.

20 MS. SCHELHAUS: Okay.

21 MS. GERARD: Does that mean you withdraw
22 the -- Ruth Ellen, are you withdrawing your motion?

23 MS. SCHELHAUS: No. Go ahead.

24 MS. HAMSHER: Okay.

1 MS. GERARD: Is there a second?

2 (No response)

3 MS. HAMSHER: The motion fails by not being
4 seconded.

5 Can we move -- is that it for Ecological?

6 (No response)

7 MS. HAMSHER: Let's look at Drinking Water
8 Modifications.

9 MS. EPSTEIN: This is Lois. Can I put on
10 the agenda for the next meeting some discussion on
11 the issues that Ruth Ellen is raising?

12 MS. GERARD: Certainly.

13 MS. EPSTEIN: Thank you.

14 MS. HAMSHER: The next in-person meeting or
15 phone meeting?

16 MS. GERARD: What difference? They're
17 still meetings. Okay. We need to move on to Water.
18 You want to rephrase, Christina, what your
19 recommendations were?

20 MS. SAMES: I had four. The first was to
21 replace the wellhead protection areas with the
22 source water protection areas.

23 The second was to -- was sort of a twofold.
24 It deals primarily with the adequate alternative

1 drinking water source definition and how it's
2 processed.

3 I recommended that we change the
4 definition, so that the amount of time for -- that
5 we consider an adequate alternative drinking water
6 source goes from one month to six months for ground
7 water sources, and that we make a preliminary
8 drinking water USA a USA when we could not verify
9 that an adequate alternative drinking water source
10 is available.

11 The third recommended change was to remove
12 the doubling of wellhead protection area and sole
13 source aquifers, and the fourth was to add the
14 outcrop areas which would also include the recharge
15 areas. So, it's outcrop and recharge areas for the
16 sole source aquifers that are karst in nature.

17 MS. HAMSHER: Again, for purposes of
18 process, I guess I have to again recommend that we
19 break these out. If they're lumped, I think we
20 might risk diluting a vote where you might have
21 somebody perfectly supportive of a couple of your
22 recommendations but not one so forced to vote no.

23 If we could break it out? Is anybody --
24 any other discussions on the general nature of this?

1 If not, I'll just make a motion to kick us off on
2 the first of OPS's recommendations.

3 MS. EPSTEIN: This is Lois. Christina,
4 what is the total area you get when you go through
5 all those different proposals that you just laid
6 out?

7 MS. SAMES: I don't have the combination of
8 adding all of them. I can tell you that for Texas,
9 it would be at least 2.7 percent of the state, for
10 Louisiana, it would be about at least five percent
11 of the state, and for California, it would be about
12 seven percent of the state.

13 MS. GERARD: That's just for this item,
14 though?

15 MS. SAMES: Yes, but that picks up some of
16 the others.

17 MS. EPSTEIN: It's going to be a
18 complicated discussion because some of the additions
19 are going to be overlapping for land areas.

20 MS. SAMES: Correct.

21 MS. EPSTEIN: Not necessarily additional
22 lands.

23 MS. SAMES: Yes. However, perhaps our
24 discussion could be limited to the merits of the

1 area or definition itself, rather than worrying
2 about the outcome of what percentage or overlapping
3 -- I mean, if it's important, the information's
4 available. It's mappable. Then the percentage or
5 area kind of falls out where it falls out.

6 MS. GERARD: Could we move ahead then with
7 the individuals?

8 MS. SAMES: And I'll --

9 MR. EPPERLY: I propose -- this is Epperly.
10

11 MS. SAMES: Okay.

12 MR. EPPERLY: I propose that we accept the
13 first recommendation that Christina had which is the
14 WHPA modification.

15 MS. SAMES: Yes. Replace the wellhead
16 protection areas with the source water protection
17 areas.

18 MR. EPPERLY: Right.

19 MS. GERARD: Is there a second?

20 MR. LOPEZ: This is Larry Miller. I second
21 it.

22 MS. GERARD: Is there any discussion?

23 (No response)

24 MS. GERARD: Could you take the roll call,

1 Denise?
2 MS. HAMSHER: Let's take the roll call.
3 Alvarado?
4 MR. ALVARADO: Yes.
5 MS. HAMSHER: Epperly?
6 MR. EPPERLY: Yes.
7 MS. HAMSHER: Epstein?
8 MS. EPSTEIN: Yes.
9 MS. HAMSHER: Miller?
10 MR. MILLER: Yes.
11 MS. HAMSHER: Harris?
12 MR. HARRIS: Yes.
13 MS. HAMSHER: Jones?
14 MR. JONES: Yes.
15 MS. HAMSHER: Morgan?
16 MS. MORGAN: Yes.
17 MS. HAMSHER: Schelhaus?
18 MS. SCHELHAUS: Yes.
19 MS. HAMSHER: Showalter?
20 MS. SHOWALTER: Yes.
21 MS. HAMSHER: Lopez?
22 MR. LOPEZ: Yes.
23 MS. HAMSHER: Stein?
24 MR. STEIN: Yes.

1 MS. HAMSHER: Hamsher, yes. That motion
2 passes by unanimous.

3 Is there another motion to modify the
4 Drinking Water definition for sole source aquifer?

5 MS. MORGAN: Yes. This is Mary. I move
6 that the definition for adequate alternative
7 drinking water supplies should be extended from 30
8 days to six months, classifying areas where the
9 supplies are known as interim USAs.

10 MS. HAMSHER: Okay. As an interim USA. Is
11 there a second?

12 MS. GERARD: Well, let me --

13 MS. HAMSHER: Can we have -- let's second,
14 and then we'll have Christina clarify some things
15 and have some discussion.

16 Is there a second?

17 MR. JONES: This is Willie. I'll second
18 that.

19 MS. HAMSHER: Okay. Is there discussion?
20 Christina?

21 MS. SAMES: For the definition, the change
22 from one month to six months, I was proposing only
23 be done for the ground water sources.

24 From what our technical reviewers stated,

1 one month was adequate for the surface water
2 intakes, and we just needed to change it to six
3 months for the ground water.

4 For the second part, though, I'm
5 recommending that we actually make as an unusually
6 sensitive area all preliminary drinking water
7 sources where we cannot verify, that we don't say
8 that they're interims, that we say that they're
9 actually USAs.

10 I don't know if that's how the -- that may
11 be how it was proposed to be amended. I just want -
12 - so, maybe I need to ask that question.

13 MS. HAMSHER: Mary, if I heard you right,
14 if you use the word "interim", what would happen?
15 Instead of having to withdraw it as a USA because
16 it's defined, if you find out information to confirm
17 that in fact they have adequate -- because they --
18 as I heard it, they might not have just answered
19 you.

20 If there is evidence brought forth, it
21 sounds a little less bureaucratic to remove it off
22 the USA list, if it's an interim category, and until
23 proven otherwise, it is an interim --

24 MS. MORGAN: Right. Until an alternative

1 is supplied.

2 MS. HAMSHER: And it just doesn't sound --
3 I don't know. I'm not using pretty lay person --

4 MS. GERARD: So, it would get protection as
5 --

6 MS. HAMSHER: It would get protection until
7 proven otherwise.

8 MS. MORGAN: Right.

9 MS. HAMSHER: Is that -- okay.

10 MS. GERARD: Any other discussion?

11 MS. HAMSHER: And do we want to amend that
12 motion to clarify that the movement to six months is
13 actually for ground water intake, not surface water?

14 MR. LOPEZ: But what happens to surface
15 water?

16 MS. SAMES: Surface water would stay at one
17 month. All of the commenters that discussed this
18 point stated that one month was adequate for the
19 surface water intakes because with surface water,
20 you have a spill. It either affects it or it passes
21 it by, and the one month was definitely long enough.

22 For ground water, it's a different story.
23 So, it was recommended that the -- for the surface
24 water intake, it remain at one point for the

1 adequate alternative definition, and for ground
2 water, it be moved to six months.

3 MS. HAMSHER: In light of that, and I'm not
4 quite sure of the procedure, I would move to amend
5 Morgan's motion such that it would say that the
6 definition for adequate alternative drinking water
7 supply should be extended to six months for ground
8 water sources, and also clarifying such an area,
9 that where it's unknown as an interim USA.

10 Mary, did I get that?

11 MS. MORGAN: Yes, that's fine.

12 MS. HAMSHER: Any other discussion?

13 MR. LOPEZ: From EPA, this is Lopez again,
14 I'm not sure I -- that we necessarily agree with the
15 one month for surface water. Even the ground water,
16 we may think it's a little short, but it's better
17 than the one month certainly.

18 But on the surface water issue, I mean,
19 thinking back to some of the recent incidents that
20 have occurred, and again I bring up the issue of
21 Browning, Texas, the drinking water supply that was
22 contaminated down there, and I -- if I'm not
23 mistaken, the City of Dallas had to close down that
24 drinking water supply for almost three months, if

1 not longer.

2 So, I'm not sure that the one month reserve
3 of water is going to be protected in certain
4 instances.

5 MS. HAMSHER: And I don't know the
6 specifics, this is Denise Hamsher again, of that,
7 but one of the things that I struggle with is making
8 sure that we don't look at one incident which
9 involved MTBE.

10 A lot of liquid lines do not include that
11 issue and addressing an across-the-board issue
12 driven by one type of product in some lines some of
13 the time.

14 MS. SAMES: And, Davis, on the -- I know
15 we're not going to discuss just particular
16 incidents, but when we looked at Lake Tawakani, we
17 ended up with the entire lake being an unusually
18 sensitive area, if that helps at all.

19 MS. EPSTEIN: This is Lois. I'm going to
20 raise a different point. On the last call, I asked
21 OPS to do an analysis of what happens when you don't
22 have an adequate alternative drinking water supply
23 filter, the idea being that all water supplies need
24 to be protected, and whether or not they have an

1 adequate alternative, partly because of problems
2 with that data, and I was in a day-long discussion
3 of how typical this was for OPS to get that data,
4 partly because those numbers would change all the
5 time. You have drought. You have generators that
6 don't work, and all kinds of things.

7 It's much cleaner to be protecting all
8 drinking water supplies at the same time, and the
9 analysis, I think, is very helpful because what it
10 shows is -- they don't have this in the printed
11 package, but people got it by e-mail, is that if you
12 don't include -- there's a question of whether or
13 not there's an alternative drinking water supply,
14 you don't increase the area very much at all, and I
15 think that's an important point because, you know,
16 for communities that are affected by pipeline
17 incidents, it's not much of a comfort to think that
18 they are being less protected than a community that
19 doesn't have an alternative supply, when they're
20 having to deal with the discomfort, however short
21 term, of waiting for new things to get hooked up.

22 I think it's cleaner, it's much more
23 supportive technically to be protecting all drinking
24 water sources, not just those -- a subset of those.

1 MS. HAMSHER: Could I suggest that we're
2 really kind of talking about a cumulative
3 definition, and that, Lois, what you're saying is
4 really a separate motion, that we go ahead --

5 MS. EPSTEIN: But the reason I brought it
6 up, Denise, is that it actually should be part of
7 the thinking right now, and since, earlier, I was
8 voting against one motion and in favor of another,
9 and I'm going to do the same thing here.

10 I'm going to be voting again for the
11 adequate alternative drinking water supply
12 definition, but I am going to keep voting in favor
13 of the motions that are removing the alternative
14 drinking water supply filter. That's it.

15 MS. HAMSHER: Okay. But, again, by voting
16 against -- it's a cumulative definition, and, so, I
17 guess I'm struggling with why you would vote against
18 something that would be included in your later
19 motion anyways. But I'll let you struggle with
20 that.

21 MS. GERARD: In other words, you could vote
22 for this and make your motion, also?

23 MS. HAMSHER: It's not exclusively limiting
24 this definition since we're voting for these in

1 sequence.

2 MS. EPSTEIN: Okay. That's clear, and I
3 guess to cover myself, it might make sense to vote
4 for both of them, but I wanted to lay out for people
5 the rationale about why I thought voting for the
6 removal of the alternative drinking water supply
7 criteria is a far stronger and supportable position.

8 MS. HAMSHER: Yes.

9 MS. GERARD: Well, you'll have the floor
10 next.

11 MS. HAMSHER: Is there further discussion?

12 (No response)

13 MS. HAMSHER: Okay. I -- to be clear, this
14 motion would be to recommend the definition for
15 adequate alternative drinking water be extended to
16 six months where it's a ground water source and that
17 such areas that are unknown be classified as an
18 interim USA.

19 Let's take a roll call. Alvarado?

20 MR. ALVARADO: Yes.

21 MS. HAMSHER: Epperly?

22 MR. EPPERLY: Yes.

23 MS. HAMSHER: Epstein?

24 MS. EPSTEIN: No. I'm hoping Dave Lopez is

1 going to make a new motion.

2 MS. HAMSHER: Miller?

3 MR. MILLER: Yes.

4 MS. HAMSHER: Harris?

5 MR. HARRIS: Yes.

6 MS. HAMSHER: Jones?

7 MR. JONES: Yes.

8 MS. HAMSHER: Morgan?

9 MS. MORGAN: Yes.

10 MS. HAMSHER: Schelhaus? Ruth Ellen?

11 MS. SCHELHAUS: Yes, yes, but with

12 reservations.

13 MS. HAMSHER: Okay. Showalter?

14 MS. SHOWALTER: Yes.

15 MS. HAMSHER: Lopez?

16 MR. LOPEZ: No.

17 MS. HAMSHER: Stein?

18 MR. STEIN: Yes.

19 MS. HAMSHER: Hamsher, yes. I show 10 yes

20 votes and two nos.

21 We can have either another motion to make

22 or that along the lines of Lois or -- complete the

23 list of OPS --

24 MS. GERARD: Why don't we let Lois make her

1 motion?

2 MS. HAMSHER: Lois?

3 MS. EPSTEIN: I'm guess I'm wondering
4 whether Dave wants to make a motion about extending
5 the time for surface water because that's more
6 related to this topic than mine.

7 MS. HAMSHER: Okay.

8 MS. GERARD: You guys have to speak up.

9 MR. LOPEZ: No. I am not going to make a
10 motion to expand it. I think we've had enough
11 discussion on this in the past, almost over the past
12 year.

13 As a matter of fact, just for the sake of
14 the group, I think one of our comments was that we
15 extend the drinking water protection from the one
16 month where it was at initially to almost one year,
17 and I think we have some discussions there with
18 respect to bringing it back to nine months, and then
19 I was kind of surprised to see the six-month limit.

20 I guess I didn't see that as far as any
21 comments coming in from the group or checking the
22 web site for comments that might have been submitted
23 by the public.

24 So, as far as surface water, we have

1 research there with respect to the one-month
2 limitation on it.

3 MS. HAMSHER: And since these are
4 cumulative type of modifications, do you want to
5 make that a motion or just express for the record
6 your continuing concern?

7 MR. LOPEZ: I want to express it for the
8 record. I'm not sure that making a motion here of
9 this group is really going to --

10 MS. SCHELHAUS: This is Ruth. I'll make a
11 motion, make it that it is okay to do six months for
12 surface and ground water.

13 MS. HAMSHER: Is there a second?

14 MR. LOPEZ: I'll second that statement.

15 MS. GERARD: Any discussion?

16 MS. MICHAEL: Yes. This is Jackie Michael
17 with RPI. You know, what we did was we've asked
18 some states, you know, one three to six months, and
19 most of the time, they said yes, the ones on -- yes
20 for at least three months. So, they have an
21 adequate alternative. They usually have it for a
22 significant period of time.

23 MS. GERARD: Any other discussion?

24 (No response)

1 MS. GERARD: Roll call, Denise.

2 MS. HAMSHER: Let's do the roll call. May
3 I ask -- before I do that. Ruth Ellen, did you mean
4 to include as the other motion did that if it's
5 unknown, that it would also be interim?

6 MS. SCHELHAUS: It can either be done in
7 combination or separately. So, yes, I would make a
8 motion that that is automatically a USA, unless it's
9 proven otherwise.

10 MS. HAMSHER: So, your motion is first six
11 months for surface --

12 MS. SCHELHAUS: For surface and ground
13 water, six months. I'll make a separate motion for
14 the other part.

15 MS. HAMSHER: And automatically or interim?

16 MS. SCHELHAUS: I'll make a separate motion
17 for the automatic.

18 MS. HAMSHER: Okay. Let's go surface water
19 six months. Let's do roll call. This is only
20 limited to that.

21 Alvarado?

22 MR. ALVARADO: Abstain.

23 MS. HAMSHER: Epperly?

24 MR. EPPERLY: Abstain.

1 MS. HAMSHER: Epstein?
2 MS. EPSTEIN: Yes.
3 MS. HAMSHER: Miller?
4 MS. GERARD: Miller?
5 MR. MILLER: Yes.
6 MS. HAMSHER: Harris?
7 MR. HARRIS: No.
8 MS. HAMSHER: Jones?
9 MR. JONES: No.
10 MS. HAMSHER: Morgan?
11 MS. MORGAN: No.
12 MS. HAMSHER: Schelhaus?
13 MS. SCHELHAUS: Yes.
14 MS. HAMSHER: Showalter?
15 MS. SHOWALTER: No.
16 MS. HAMSHER: Lopez?
17 MR. LOPEZ: Yes.
18 MS. HAMSHER: Stein?
19 MR. STEIN: Abstain.
20 MS. HAMSHER: Hamsher, I'll abstain.
21 MS. GERARD: It's a tie.
22 MS. HAMSHER: As in not enough information.
23 Are there further motions to amend the drinking
24 water definition of the USA?

1 MS. SCHELHAUS: This is Ruth. I'll go
2 ahead and make a motion to it's unknown that it
3 would automatically be a USA, and then there's the
4 issue that EPA brought up about the evaluation and
5 concurrence of local fire authorities, that there's
6 fire-fighting capacity before it's an approved
7 alternative.

8 MS. GERARD: All right. Well, on the first
9 one, the previous motion by Mary Morgan already
10 covered that if there wasn't back-up information, it
11 automatically is covered as an interim USA.

12 MS. SCHELHAUS: Right. I'm saying it's
13 automatic, without having the term "interim".

14 MS. HAMSHER: For discussion purposes,
15 Mary, maybe you can expand on what you mean by
16 "interim" to make sure rather than speaking for you.

17 MS. MORGAN: It was that it would be an
18 interim, unless or until the alternative supply time
19 frame could be confirmed.

20 MS. HAMSHER: So, --

21 MS. MORGAN: It's there automatically until
22 they confirm that there is an alternative supply.

23 MS. SAMES: And if I understand correctly,
24 it's treated as an unusually sensitive area, unless

1 it is confirmed that there is an adequate
2 alternative.

3 MS. HAMSHER: So, rather than to petition
4 or some other means to get it off, it's a
5 clarification of information.

6 MS. SCHELHAUS: But there's no need to have
7 the interim, the term "interim" in there.

8 MS. HAMSHER: Other than -- it's process.

9 MS. GERARD: Ruth, you're making a motion?

10 MS. SCHELHAUS: Yes, I'm making a motion
11 because there's no need to interject the term
12 "interim" into the USA concept for water,
13 alternative water sources, that if information is
14 not known or it's not completely confirmed and
15 accepted, that there is a specific alternative water
16 supply that is considered a USA automatically.

17 MS. SAMES: The only -- I'm sorry. This is
18 Christina. The only benefit that I see for using
19 the term "interim" would be for people who are
20 viewing the maps of the unusually sensitive areas.
21 It would provide a flag to say these are the ones
22 that we're treating as an unusually sensitive area
23 but could not receive confirmation whether there's a
24 back-up.

1 So that, where you see an unusually
2 sensitive area that's designated completely as an
3 unusually sensitive area, you know that we have
4 confirmed that there is no back-up, and for the
5 interim USAs, we're treating them as unusually
6 sensitive areas until confirmation can be received.

7 MS. GERARD: So, the advantage to us, Ruth
8 Ellen, could be -- and, of course, we didn't hear
9 this proposal before, but it speaks to the quality
10 of the data, that there is a need for an improvement
11 in the quality of information.

12 So, if you have interim there, there's like
13 a flag on it that says to the community, help,
14 update your information.

15 MS. SCHELHAUS: This is Ruth. What percent
16 -- if I remember correctly, you had a large majority
17 of your data, you did not know about, and, so, you'd
18 be basically saying that a majority of them are like
19 interim but could easily get off or whatever.

20 I mean, it makes your data look really --

21 MS. SAMES: Well, they couldn't -- you
22 know, from my perspective, you couldn't get them
23 off, though, unless you could confirm that there was
24 an adequate alternative.

1 You're not kicking them off arbitrarily.
2 There would have to be something provided to the
3 Office of Pipeline Safety that stated that there
4 truly was an adequate alternative in order to remove
5 them, and until that time, they would be treated as
6 unusually sensitive areas. That's why I asked the
7 questions before on how an interim was treated,
8 because --

9 MS. SCHELHAUS: I guess -- this is
10 Schelhaus. I don't see the need to treat it as
11 being an interim because it's either yes or it's no.

12 MS. HAMSHER: I'm not sure we have a second
13 on that motion. Could we have a second and the kind
14 of finish the -- any dialogue? Is there a second on
15 that motion?

16 MS. EPSTEIN: Yes.

17 MS. HAMSHER: And who was that?

18 MS. EPSTEIN: Lois.

19 MS. HAMSHER: Let's take a roll call. Is
20 there any other further discussion?

21 (No response)

22 MS. HAMSHER: Let's take a roll call.
23 Alvarado?

24 MR. LOPEZ: Please, before you --

1 MS. HAMSHER: Yes?

2 MR. LOPEZ: Can you read the motion or
3 paraphrase it?

4 MS. HAMSHER: Ruth Ellen?

5 MS. SCHELHAUS: The motion would be, is
6 that if it's information -- if one cannot confirm
7 and accept that there is a true alternative source
8 that meets the criteria, then it would be considered
9 a USA automatically.

10 MR. LOPEZ: Thank you.

11 MS. HAMSHER: Alvarado?

12 MR. ALVARADO: Yes.

13 MS. HAMSHER: Epperly?

14 MR. EPPERLY: No.

15 MS. HAMSHER: Epstein?

16 MS. EPSTEIN: Yes.

17 MS. HAMSHER: Miller?

18 MR. MILLER: Yes.

19 MS. HAMSHER: Harris?

20 MR. HARRIS: No.

21 MS. HAMSHER: Jones?

22 MR. JONES: No.

23 MS. HAMSHER: Morgan?

24 MS. MORGAN: No.

1 MS. HAMSHER: Schelhaus?

2 MS. SCHELHAUS: Yes.

3 MS. HAMSHER: Showalter?

4 MS. SHOWALTER: No.

5 MS. HAMSHER: Lopez?

6 MR. LOPEZ: Yes.

7 MS. HAMSHER: Stein?

8 MR. STEIN: Yes.

9 MS. HAMSHER: Hamsher, no. That motion, my
10 count says six yes and six no.

11 Are there other modifications to the
12 drinking water definition that somebody wants to
13 move?

14 MS. EPSTEIN: Yes. This is Lois. I would
15 like to propose that the alternative -- as an
16 alternative drinking water source filter be removed.

17 MS. SAMES: For those of you in the room
18 who didn't hear, the proposal was to remove the
19 adequate alternative drinking water source filter.

20 MS. EPSTEIN: And the argument for that is
21 there's so much non-information, it's a far cleaner,
22 easier, safer source. That was an important
23 criterion for some people on the vote for the
24 ecological portion of this rule, and it provides a

1 level playing field of protection for all drinking
2 water sources across the country, and it doesn't
3 significantly increase the area that would be
4 included in the rule.

5 MS. HAMSHER: Is there a second to Lois's
6 motion?

7 MR. LOPEZ: Well, before we -- Lois, if I
8 understand your proposal then, it's that you're
9 proposing to remove it because if we're protecting
10 surface water and ground water, regardless of
11 whether it's drinking water, it's protected on both,
12 and am I understanding that correctly?

13 MS. EPSTEIN: The idea is that you wouldn't
14 have to make the phone calls, if you knew you had a
15 drinking water source, ground or surface water. It
16 would automatically be protected, the way the model
17 has been laid out to protect a certain radius of
18 protection.

19 MS. GERARD: Saves all the phone calls.

20 MS. SAMES: For those of you who -- just to
21 refresh your memory on the model, what we did was we
22 looked at the surface intakes, and we looked at the
23 ground water to determine if they were susceptible
24 to contamination from the spill.

1 This is primarily with ground water. For
2 ground water, we looked at the geology and a bunch
3 of other criteria. After we got through all of
4 that, we then said was there an adequate alternative
5 drinking water source. If the answer was yes, that
6 there was an adequate alternative, it was not an
7 unusually sensitive area.

8 If there was not an adequate alternative or
9 we -- from the proposal, if we could not get an
10 answer, then it became an unusually sensitive area.

11 So, the proposal is to remove that final filter.

12 MS. HAMSHER: Is there clarity then on the
13 motion? Is there -

14 MR. LOPEZ: How does -- one more question.
15 How does that impact the sole source aquifer --

16 MS. HAMSHER: Please --

17 MR. LOPEZ: -- issue?

18 MS. HAMSHER: -- use your last name.

19 MR. LOPEZ: I'm sorry. This is Lopez with
20 EPA.

21 MS. SAMES: How it would affect the sole
22 source aquifers? After we came up with our
23 determination of which sole source aquifers could be
24 contaminated due to the geology and other factors,

1 the one -- this would pick up the ones that were
2 kicked out because there was an adequate alternative
3 drinking water source, which, for sole source
4 aquifers, there probably isn't.

5 I mean, by the definition of a sole source
6 aquifer, there is no back-up source. So, --

7 MR. WILLIAMS: Christina, this is Jack
8 Williams.

9 MS. SAMES: Sure.

10 MR. WILLIAMS: That's not always the case.

11 I mean, it may not be another aquifer source, but
12 there certainly may be a lake or a pond that the
13 community might draw their water from.

14 MS. SAMES: For the period of time that we
15 were discussing? Okay.

16 MR. WILLIAMS: Yes.

17 PARTICIPANT: But generally there isn't.
18 That's part of the definition. It may be a
19 supplemental supply, right?

20 MR. WILLIAMS: Well, I mean, you could have
21 a huge reservoir.

22 MS. SAMES: That was Jack Williams.

23 MS. HAMSHER: Jack, would you please
24 introduce -- Jack?

1 MR. WILLIAMS: It has nothing to do with
2 the sole source aquifer. You can have a sole source
3 aquifer in the same location and have back-up for
4 either case.

5 MS. EPSTEIN: Jack, who are you with?

6 MR. WILLIAMS: I'm with Colonial. I'm the
7 Chairman for API USA.

8 MS. EPSTEIN: The only reason I was asking
9 is that I guess I wanted a regulator that's familiar
10 with the Drinking Water Program to confirm that
11 because I'm not sure that's accurate.

12 MS. BETSOCK: Right. We should not have --
13 this is Barbara Betsock. There shouldn't be
14 participation by the public members on this phone
15 call. This is the advisory committee debate.

16 MS. HAMSHER: I'm not clear on that. We've
17 previously had votes and gone through discussion
18 among the committee and sought clarification or
19 public comment as part of the public meeting
20 process.

21 How would somebody, particularly if it's an
22 issue that we're trying to clarify, rather than them
23 just weighing in --

24 MS. BETSOCK: If members of the committee

1 ask for clarification from the public, that's fine.

2 MS. HAMSHER: Okay.

3 MS. BETSOCK: It's up to you to control
4 based on your time.

5 MS. HAMSHER: Okay.

6 MS. MICHAEL: I have a definition of sole
7 source aquifer if anybody wants to hear it.

8 MS. SAMES: I'm sorry. That's -- I'm
9 sorry. Who is this?

10 MS. HAMSHER: I'm sorry. That's my
11 contractor, Jackie Michael.

12 Could we, I think, get a couple of people
13 to weigh in on this that have knowledge about the
14 alternative -- we still do not have a second to this
15 motion.

16 MS. SCHELHAUS: This is Ruth. I'll second
17 it.

18 MS. HAMSHER: Okay. Can we please clarify
19 with the OPS contractor this issue about adequate
20 alternatives?

21 MS. MICHAEL: I guess the discussion was
22 about what a sole source aquifer was.

23 MS. SAMES: Yes. I actually -- I have the
24 definition I can read for the advisory committee.

1 A sole source aquifer is an aquifer that
2 basically supplies -- hold on one second. Offers
3 ground water supplies 50 percent or more of the
4 drinking water for an area, and basically if that
5 area becomes -- there is no back-up source for that
6 adequate -- that would be an adequate alternative.

7 That's why when David asked the question of
8 how this would affect sole source aquifers, I stated
9 that it really shouldn't impact them because from
10 the definition, there is no adequate alternative for
11 a sole source aquifer.

12 MS. HAMSHER: Is there further discussion?
13 What I'd like to do is ask for clarification from
14 anybody, either committee members or others, on
15 this, so that we're very clear what the scope of
16 this recommendation is.

17 MS. SHOWALTER: This is Marilyn Showalter.
18 I'm having a hard time hearing the conversation.
19 It's cutting in and out, but if you could assure me,
20 I just want to ask, I think, Lois Epstein, the
21 policy question.

22 It seems to me that it is the case that
23 where there is no alternative, that's a more dire
24 situation, and therefore we want heightened

1 scrutiny. So, then the question is, if you want to
2 broaden this to all drinking areas, are we or aren't
3 we, you know, deluding sort of the priorities that
4 we need to give to the most critical areas?

5 MS. EPSTEIN: I would say all drinking
6 water supplies are critical, and that's where I'm
7 coming from. I agree that those without alternative
8 supplies may be a higher priority, but given that it
9 would not require a lot of additional new measures,
10 I would say that there ought to be protection for
11 all drinking water supplies because I know the
12 impacts are so serious.

13 Let me just read for those of you who don't
14 have it on your screen. In Texas, the original
15 proposal with the adequate alternative drinking
16 water supply would cover 2.7 percent of the land
17 area. My proposal would cover 4.2.

18 In Louisiana, it's 5.2 percent originally,
19 moved it up to 9.3 percent, and in California, it's
20 6.9 percent originally, without alternative drinking
21 water supplies, and that would move it up to 9.9
22 percent. So, a slight increase, but, you know,
23 basically it's sharing protection for all drinking
24 water supplies across the country.

1 MS. HAMSHER: Can I ask Jack Williams, who
2 was involved in this, to add any other
3 clarifications that you might? This is Denise
4 Hamsher.

5 MR. WILLIAMS: What I would just want to
6 make sure that we understand is that going back to
7 our guiding principles, you know, we're trying to
8 look for things that were unique, irreplaceable,
9 irretrievably harmed, and that was the whole idea of
10 having the adequate alternative drinking water issue
11 out there, and that -- we understand that there's a
12 lot of different drinking water sources out there,
13 but we wanted to get to those things that we were --
14 we felt as though were very unique and that needed
15 that additional protection, and that was why we came
16 to the adequate alternative drinking water resource
17 concept.

18 MS. EPSTEIN: This is Lois. In response to
19 that, just in terms of the development of the
20 guiding principles, there wasn't a lot of outside
21 input. There's been a lot more since then by other
22 groups, and not all organizations were in agreement
23 with those guiding principles, but it was what
24 basically OPS used in the beginning in its

1 development of the rule.

2 MS. HAMSHER: Is there other comment or
3 questions?

4 MS. GERARD: Well, I would just like to
5 make the comment that there were how many phone
6 calls involved in the state of Texas, Christina?

7 MS. SAMES: About 15,000.

8 MS. GERARD: There is a significant cost
9 savings in not having to make those phone calls to
10 check for it.

11 MS. HAMSHER: Well, may I clarify? That
12 means the cost savings for OPS --

13 MS. EPSTEIN: Which is not insignificant in
14 an agency that can't even hold the meeting right now
15 in person.

16 MS. HAMSHER: That is true, but to look at
17 total costs, and we'll get into cost-benefit, you
18 have to look at total costs, and the costs that OPS
19 saved has to be weighed against the benefit albeit
20 and the cost to industry for adding several percent
21 increase in the percentages, not an insignificant
22 increase, and, so, when we say costs, that may be
23 true, but we've got to look at in the whole big
24 picture following OPS's guidelines, that all costs

1 have to be included as well as all benefits.

2 MS. SCHELHAUS: This is Ruth. There's
3 also, though, the added -- whether the review for
4 ensuring that there's fire -- enough supplies for
5 fires. So, you're talking that even there's time
6 and expenditure out at the local and local levels
7 trying to determine whether there is an adequate
8 water supply source or if there would be, so that it
9 would make it more feasible if you didn't do it or
10 it would make it less costly on other people besides
11 just OPS, if there was no category of alternative
12 water supply source.

13 MS. HAMSHER: Is there further discussion?

14 (No response)

15 MS. HAMSHER: Can we take a roll call on
16 the motion to remove the filter for adequate
17 alternative water supply?

18 Alvarado?

19 MR. ALVARADO: Yes.

20 MS. HAMSHER: Epperly?

21 MR. MILLER: No.

22 MS. HAMSHER: Epstein?

23 MS. EPSTEIN: Yes.

24 MS. HAMSHER: Miller?

1 MR. MILLER: Yes.

2 MS. HAMSHER: Harris? O.D. Harris?

3 MR. HARRIS: No.

4 MS. HAMSHER: Jones?

5 MR. JONES: No.

6 MS. HAMSHER: Morgan?

7 MS. MORGAN: No.

8 MS. HAMSHER: Schelhaus?

9 MS. SCHELHAUS: Yes.

10 MS. HAMSHER: Showalter?

11 MS. SHOWALTER: Abstain.

12 MS. HAMSHER: Lopez?

13 MR. LOPEZ: Yes.

14 MS. HAMSHER: Stein?

15 MR. STEIN: Abstain.

16 MS. HAMSHER: Hamsher, no. Five yes, five

17 no, two abstentions.

18 Are there further motions to modify the

19 drinking water criteria?

20 MS. SCHELHAUS: This is Ruth. I guess I'd

21 like to add in there the requirement under -- I

22 believe the regulation has qualifications about what

23 needs to be done, what is alternative, and I would

24 require that fire-fighting capacity, evaluation and

1 concurrence by local fire authorities, that there is
2 fire-fighting capacity in the area that is
3 considered an improved alternative water supply.

4 MS. SAMES: I'm not sure that -- let me
5 just ask the question. Well, let me first explain
6 to the group very quickly how we determined if there
7 was an adequate alternative drinking water supply.

8 What we did was we called the local water
9 authorities and asked them if they -- if something
10 happened to their primary water supply, did they
11 have a back-up that was readily available that they
12 could use to supply the community with the water for
13 a period of time.

14 Are you -- now, let me ask this question.
15 Are you recommending, Ruth Ellen, that we then,
16 after we get an answer from these local water
17 authorities, that we then have to go to the fire
18 departments to get additional information?

19 MS. SCHELHAUS: Or get assurance through
20 the local water authority that they have the
21 required fire-fighting water capacity for fire-
22 fighting.

23 MS. GERARD: Ask the local water authority
24 that question?

1 MS. SCHELHAUS: At least that, if not
2 minimum, that would be.

3 MS. HAMSHER: Is there a second to Ruth
4 Ellen's motion?

5 (No response)

6 MS. HAMSHER: Hearing no second, that
7 motion does not --

8 MS. EPSTEIN: Sorry. This is Lois. I had
9 mine on mute for a second. Yes.

10 MS. HAMSHER: Okay. Is there further
11 discussion?

12 (No response)

13 MS. HAMSHER: I guess the point I have to
14 do is that this is outside the scope of drinking
15 water. I mean, we are defining what drinking water
16 is.

17 MS. EPSTEIN: It's water supply more
18 generally because that's what's important, because
19 if you had a contaminated drinking water supply, you
20 certainly couldn't use it for fire-fighting or at
21 least you couldn't for certain things, and they may
22 not want to, depending on the type of contamination.
23 I mean, I think water with lots of hydrocarbons
24 could be a problem.

1 MS. HAMSHER: I think we're having a very
2 frustrated recorder here. We're just going to have
3 to get in the habit of saying your last name and
4 still trying to keep up some semblance of an
5 effective and constructive conversation. Sorry
6 about that.

7 MS. GERARD: Any other discussion on the
8 fire-fighter water supply concurrence as part of
9 asking the local water authority about the adequacy
10 of the back-up supply?

11 MR. LOPEZ: This is Lopez with EPA. I
12 concur with that, the statement from both Lois and
13 Ruth, in the sense that it is a water intake that
14 we're looking at. I'm going back to the comments
15 and some of the interpretations that we had, and,
16 you know, whether it's industrial or actual drinking
17 water, it's important that we consider the uses of
18 the water by community, and fire-fighting and
19 industrial use is certainly, as far as we're
20 concerned, falls into that category.

21 So, the question is going around to those
22 municipalities and those communities, and they're
23 being asked about their water, that this, too,
24 should be taken into consideration.

1 MS. HAMSHER: I guess that's important, and
2 I think it's one of the disciplines of the whole USA
3 thing, to at least start somewhere. I have a
4 problem, as important as fire-fighting access is.
5 You have irrigation. You have manufacturing use.
6 You have power plants. I mean, there is a whole
7 host of uses of water that this opens up a can of
8 worms for right now and have a problem, and that's
9 just where I'm coming from.

10 It's not that it's not important. It's
11 just that it doesn't address a host of other factors
12 where we use community water sources for, that the
13 most important right now are being addressed with
14 drinking water right now, and that if there's other
15 extensions, we do that in an incremental basis at a
16 later time, and again have that subject to peer
17 review.

18 We did not on this one nor find out if the
19 data was readily accessible.

20 MS. SAMES: That's logistically -- I'm not
21 sure -- in order for us to make the determination,
22 I'm not sure that we would be able to get the
23 information we need from the local water authorities
24 as to whether they had enough water to supply their

1 drinking water community plus fire-fighters. I'm
2 not sure they're adequately equipped to answer that
3 question.

4 MS. SCHELHAUS: This is Schelhaus. Very
5 rarely would you find that you would use -- that a
6 community per se would separate out the drinking
7 water versus -- and the fire-fighting when they're
8 looking at whether they have an alternative water
9 supply. It's a public safety issue relative to
10 fire-fighting.

11 MS. HAMSHER: I guess I don't have vast
12 knowledge. I have incidental knowledge, and both
13 where I live and where we have operated, I know that
14 we've created retention ponds in order to have an
15 alternative for local fire departments to look at
16 increasing the reservoirs for them.

17 So, there's all sorts of different
18 alternatives to the community source and the normal
19 source, that they would be able to do pumpers hauled
20 up to reservoirs or lakes to do that. So, I think
21 it's -- again, it just gets at the complicated
22 nature of this, however important, just hasn't had
23 time to be looked into for purposes of this
24 rulemaking or our recommendation.

1 MS. GERARD: I just want to do a logistics
2 check. It's now a quarter of 2, which is the time
3 that we had set to complete this discussion for both
4 rulemakings. I just want to make sure, is all of
5 the committee available to stay on the line for
6 another hour?

7 MS. MORGAN: This is Mary Morgan. I have
8 to break away from 1 to 1:15.

9 MS. HAMSHER: Okay.

10 MS. MORGAN: I have someone here with me
11 who can vote for me.

12 MS. GERARD: No.

13 MS. MORGAN: On the ones that I know about,
14 he could vote for me or --

15 MS. GERARD: No. Mary, it has to be you on
16 the vote.

17 MS. MORGAN: Okay.

18 MS. GERARD: Is there -- can everybody -- I
19 mean, maybe -- is everybody available for about
20 another hour if we take a little break and come
21 back, keeping the line open?

22 MR. STEIN: This is Bruce Stein. I have a
23 conflict at 2:00.

24 MR. LOPEZ: Same thing here, too. This is

1 Dave.

2 MS. MORGAN: Oh, I meant 2 to 2:15 Eastern
3 time. I'm talking about 1:00 central time.

4 MS. GERARD: Right.

5 MR. MILLER: Stacey, I've got 45 minutes.
6 This is Larry Miller.

7 MR. ALVARADO: This is Alex Alvarado. I'm
8 okay.

9 MS. GERARD: What are the rules on a
10 quorum?

11 MR. JONES: This is Willie. I'm fine, too.

12 MS. GERARD: All right. Well, I suggest
13 that we keep on going.

14 MS. SCHELHAUS: This is Ruth. We have a
15 constitution relative to representation of different
16 groups.

17 MS. HAMSHER: I thought I heard a fairly
18 representative dial-off, and we would still have a
19 majority, is that right? We have one industry --

20 MS. GERARD: Okay. Let's do a roll call of
21 who can stay on the line for another hour and 10
22 minutes. Could you do a roll call, Denise?

23 MS. HAMSHER: Alvarado?

24 MR. ALVARADO: Okay.

1 MS. HAMSHER: Epperly?
2 MR. EPPERLY: Okay.
3 MS. HAMSHER: Epstein?
4 MS. EPSTEIN: Yes, but I'd love to get
5 something to eat.
6 MS. HAMSHER: Miller?
7 MR. MILLER: No.
8 MS. GERARD: Miller is no?
9 MR. MILLER: Right.
10 MS. HAMSHER: Hamsher, yes. Harris?
11 MR. HARRIS: I'm okay.
12 MS. HAMSHER: Jones?
13 MR. JONES: Yes.
14 MS. HAMSHER: Morgan?
15 MS. MORGAN: I'll just be gone for 15
16 minutes, from 2 to 2:15.
17 MS. HAMSHER: Okay. Schelhaus?
18 MS. SCHELHAUS: Okay.
19 MS. HAMSHER: Showalter?
20 MS. SHOWALTER: Yes.
21 MS. HAMSHER: Lopez?
22 MR. LOPEZ: No. It depends on what time
23 you're going to reconvene after the lunch break or a
24 short break.

1 MS. HAMSHER: We would reconvene at 2:15
2 Eastern time.

3 MR. LOPEZ: Okay. No, I cannot.

4 MS. SAMES: Can you -- how long are you
5 gone, David?

6 MR. LOPEZ: I'm going to be gone for about
7 an hour.

8 MS. SAMES: Okay.

9 MS. HAMSHER: Stein?

10 MR. STEIN: I have a conflict at 2:00 that
11 lasts about an hour.

12 MS. GERARD: So, we're losing three.

13 MS. HAMSHER: We have one government, Larry
14 Miller.

15 MS. GERARD: We have one public, one
16 government, and --

17 MS. HAMSHER: And an industry for a short
18 while. That's still a majority. It's scattered. I
19 don't think we -- we still have representatives,
20 three or so representatives, each from government
21 and public.

22 MS. SCHELHAUS: Question. I mean, if we're
23 going to be talking about water and losing EPA, I
24 would think it's significant.

1 MS. HAMSHER: Well, I think we can continue
2 on through here and carry over, may I suggest, the
3 discussion of the Integrity Management Rule? So,
4 let's finish up the USA here before we lose anybody.

5 MS. GERARD: Right. Okay. Can we get the
6 roll call on the fire-fighter?

7 MS. HAMSHER: We had a motion, yes.

8 MS. GERARD: Right. We had a motion to
9 involve fire-fighter input into the request to the
10 local community about the adequacy of the back-up
11 water supply. Could we get a roll call on that?

12 MS. HAMSHER: Alvarado?

13 MR. ALVARADO: Abstain.

14 MS. HAMSHER: Epperly?

15 MR. EPPERLY: No.

16 MS. HAMSHER: Epstein?

17 MS. EPSTEIN: Yes.

18 MS. HAMSHER: Miller?

19 MR. MILLER: Yes.

20 MS. HAMSHER: Harris?

21 MR. HARRIS: No, again.

22 MS. HAMSHER: Jones?

23 MR. JONES: No.

24 MS. HAMSHER: Morgan?

1 MS. MORGAN: No.

2 MS. HAMSHER: Schelhaus?

3 MS. SCHELHAUS: Yes.

4 MS. HAMSHER: Showalter?

5 MS. SHOWALTER: Yes.

6 MS. HAMSHER: Lopez?

7 MR. LOPEZ: Yes.

8 MS. HAMSHER: Stein?

9 MR. STEIN: Yes.

10 MS. HAMSHER: Hamsher, no. I show six yes
11 votes, five no and one abstention.

12 Are there other -- further motions to amend
13 the drinking water definition -- part of the USA
14 definition?

15 MS. SAMES: I just want to point out that
16 two of the recommendations that I made haven't been
17 discussed. The first is removing the doubling of
18 the wellhead protection areas and sole source
19 aquifers.

20 MS. HAMSHER: Maybe I could make a
21 recommendation on the doubling?

22 The committee recommends the definition for
23 sole source aquifer should remove the doubling of
24 the wellhead protection area and instead use state-

1 specified protection areas.

2 Did I characterize your recommendation the
3 right way?

4 MS. SAMES: Mostly. Right now, we use
5 state-specified criteria which they used in the
6 wellhead protection areas, which they'll also use
7 for the source water protection areas.

8 MS. HAMSHER: So, removing the doubling is
9 enough?

10 MS. SAMES: It's enough.

11 MS. HAMSHER: Okay. I'll amend that motion
12 to just recommend the definition of sole source
13 aquifer should remove the doubling of the wellhead
14 protection area.

15 MS. SAMES: And just very quickly, the
16 reason was that the commenters stated we were
17 second-guessing the states by doubling it, and that
18 we should not second-guess the states.

19 MS. MORGAN: This is Mary Morgan. I'll
20 second Denise's motion.

21 MS. HAMSHER: Is there any discussion?

22 (No response)

23 MS. HAMSHER: Let's take a roll call.

24 Alvarado?

1 MR. ALVARADO: Yes.
2 MS. HAMSHER: Epperly?
3 MR. EPPERLY: Yes.
4 MS. HAMSHER: Epstein?
5 MS. EPSTEIN: Yes.
6 MS. HAMSHER: Miller?
7 MR. MILLER: Yes.
8 MS. HAMSHER: Harris?
9 MR. HARRIS: Yes.
10 MS. HAMSHER: Jones?
11 MR. JONES: Yes.
12 MS. HAMSHER: Morgan?
13 MS. MORGAN: Yes.
14 MS. HAMSHER: Schelhaus?
15 MS. SCHELHAUS: Yes.
16 MS. HAMSHER: Showalter?
17 MS. SHOWALTER: Yes.
18 MS. HAMSHER: Lopez?
19 MR. LOPEZ: Yes.
20 MS. HAMSHER: Stein?
21 MR. STEIN: Yes.
22 MS. HAMSHER: Hamsher, yes. That motion
23 carries unanimously.
24 MS. GERARD: Are there any others?

1 MS. HAMSHER: There was one more that
2 Christina had on the -- would you rephrase it?

3 MS. SAMES: It was simply to add the -- it
4 was to add the outcrops and recharge areas of the
5 sole source aquifers in karst areas.

6 MS. HAMSHER: Is there a motion?

7 MS. SCHELHAUS: This is Schelhaus. I'll
8 make a motion, but it will be slightly different.
9 It would be to add the outcrop areas of all sole
10 source aquifers, not limited to karst.

11 MR. HARRIS: That's usually the way it is.
12 This is O.D. Harris.

13 MS. HAMSHER: Can we go sequentially? May
14 I suggest that we deal with the karst first because
15 that -- again, this would be incremental, Marilyn,
16 and then you can later make another recommendation
17 to further expand it? Would that get at your issue?
18 I'm sorry.

19 Was that Ruth Ellen or Mary?

20 MS. MORGAN: I'm not sure quite -- you were
21 addressing me just now.

22 MS. HAMSHER: I'm sorry. It -- again,
23 because --

24 MS. GERARD: Ruth Ellen wouldn't say who

1 she was.

2 MS. HAMSHER: Yeah.

3 MS. SCHELHAUS: I'm sorry.

4 MS. HAMSHER: Sorry. Either -- I messed
5 up. So, again since it --

6 MS. SCHELHAUS: Schelhaus. I personally
7 believe that it isn't just karst, that it would be
8 unconsolidated settlement areas. So, I know what
9 you're trying to do, incremental. I believe the
10 issue is broader than karst.

11 MS. HAMSHER: Okay. So, do you want to
12 phrase that in the term of a motion?

13 MR. HARRIS: This is O.D. That's separate
14 than what's on the table. It seems to me to be
15 different.

16 MS. HAMSHER: So, somebody make a motion to
17 deal with one or the other. That was O.D. One or
18 the other of these into a motion.

19 MR. HARRIS: This is O.D. Harris. I'll
20 make a motion for the sole source aquifers that
21 occur in karst geological areas as USAs.

22 MR. FELL: Speak up, please. Repeat that.

23 MR. HARRIS: Beg your pardon?

24 MS. HAMSHER: We need you to say that

1 again. There's a little bit of noise here.

2 MR. HARRIS: I'll make a motion to include
3 sole source aquifers that occur in karst geological
4 areas as USAs.

5 MS. HAMSHER: He's making a recommendation
6 to include sole source aquifers that --

7 MS. SAMES: You mean the outcrops?

8 MS. HAMSHER: That the outcrops that have a
9 karst area as an outcrop, is that right?

10 MS. SAMES: Outcrop recharge areas.

11 MR. HARRIS: Right.

12 MS. HAMSHER: Okay. That is a motion. Is
13 there a second?

14 (No response)

15 MS. GERARD: Is there a second?

16 MR. JONES: I'll second the motion. This
17 is Willie Jones.

18 MS. GERARD: Thank you.

19 MS. HAMSHER: Is there any discussion on
20 the karst area?

21 MS. EPSTEIN: This is Lois. I have a
22 question for Christina. I noted on your table under
23 Louisiana and California, it doesn't provide data
24 for the areas. Are those data not available or

1 what's the situation there?

2 MS. SAMES: They're not karst. They're not
3 karst in nature.

4 MS. EPSTEIN: So, it's not applicable?

5 MS. SAMES: Yes.

6 MS. EPSTEIN: Okay, okay. So, zero
7 essentially?

8 MS. SAMES: It just means it's not
9 applicable for those particular areas. So, the sole
10 source aquifers that are in Louisiana and California
11 aren't karst in nature. So, it doesn't apply.

12 MS. HAMSHER: Do we know -- and I guess I'd
13 ask anybody, either members or non-members, if this
14 information is available in the non-pilot states?

15 MR. HARRIS: This is O.D. Harris. The
16 inland aquifer in Texas is the biggest karst aquifer
17 in the karst region, and it is mapped --

18 MS. HAMSHER: O.D., we're going to have to
19 -- for some reason, we're not picking you up very
20 well. I'm sorry. Could you -- I could repeat that.

21 MR. HARRIS: Is this better?

22 MS. HAMSHER: Yes.

23 MR. HARRIS: Okay.

24 MS. HAMSHER: Anybody who wants to

1 contribute or add, please get off the speaker and
2 use the mike on your handset. Thank you.

3 MS. SAMES: The comments that was made
4 dealt with the -- stated that the Edwards aquifer is
5 the biggest sole source aquifer outcrop area for --
6 in the U.S. for karst areas. That's correct, and
7 I'm sorry if I'm starting to get incoherent at this
8 point.

9 Again, my question was that may be true for
10 Texas. Do we know of the availability of publicly-
11 available data that would confirm such areas
12 throughout the United States? Again, is the data
13 available, and is it mappable?

14 Bill, are you still on the line?

15 MS. MICHAEL: Yes. This is Jackie, yes.

16 MS. SAMES: I had Jackie and Bill take a
17 look at the rest of the U.S., and I'll let you guys
18 jump in. From what I understand, there's -- we
19 looked at the sole source aquifers throughout the
20 nation. There's karsts in Florida, parts of
21 Oklahoma.

22 Jump in, guys, because I don't remember the
23 rest.

24 MS. MICHAEL: We looked at every sole

1 source aquifer and determined whether it was karst
2 or not. We were able to do that.

3 MS. SAMES: So, the data is available.

4 MS. GERARD: Is available. Is there any
5 other discussion on karst?

6 MR. WILLIAMS: This is Jack Williams again.
7 You know, there is -- you know, some of the terms
8 that you're throwing out there, you know, outcrops
9 versus recharge, those are not interchangeable
10 terms, and --

11 MS. SAMES: You're right. It's outcrops
12 and recharge areas because there are a few cases
13 where the recharge areas are outside of the outcrop
14 areas.

15 MR. WILLIAMS: That's right, and just
16 because it's an outcrop does not mean that's a
17 recharge zone either. So, I think, you know, you
18 need to get some better definition and better -- get
19 your arms around what the term -- actually what you
20 want to use and what you're really calling it. It's
21 so broad what you're throwing out there right now,
22 that I don't think you really know exactly what, you
23 know, you're voting on.

24 MR. HARRIS: This is O.D. Harris.

1 Specifically, I wanted to show recharge areas and a
2 karst aquifer.

3 MS. HAMSHER: Okay.

4 MR. WILLIAMS: One thing that I -- this is
5 Jack Williams again. I hope you all do consider as
6 well, is that the -- under the current situation,
7 the karst aquifers have already been considered
8 under the Pettijohn Classification. They're a 1-B,
9 and, so, what we're really doing here is more or
10 less restating what we've already captured in the
11 original definition.

12 MS. HAMSHER: David Lopez, is there -- can
13 we -- any committee members kind of verify that,
14 that this would be a redundant -- if we're talking
15 about recharge areas, is that part of the Pettijohn
16 definition?

17 MR. LOPEZ: Okay. I don't have any
18 information about that, but I can certainly do
19 something to try and get it and see what I can refer
20 back to the committee.

21 MS. HAMSHER: Why don't we -- do we have a
22 second on that motion? If it's redundant or
23 possibly not redundant, as long as people know that,
24 is there a second?

1 MS. MICHAEL: This is Jackie Michael at
2 RPI. Can I make a comment?

3 MS. GERARD: Please.

4 MS. MICHAEL: When we looked at the
5 classifications, again all -- well, there -- those
6 aquifers classified as 1B, which are -- do become
7 USAs, except -- but it's only the wellhead
8 protection area around the wells, not the entire
9 aquifer or the outcrop area.

10 MR. WILLIAMS: Well, they've already --
11 this is Jack Williams. They accepted the source
12 water protection areas and not the wellhead
13 protection areas now. So, that becomes, you know,
14 the recharge areas --

15 MS. HAMSHER: So, we've already made a
16 recommendation to switch, if it's available,
17 wellhead to the surface water. So, that would, am I
18 hearing, already would include --

19 MS. EPSTEIN: But it doesn't provide
20 protection for wells that don't exist. So, that's
21 the difference, that this will cover the whole
22 aquifer itself, --

23 MR. FELL: Lois?

24 MS. EPSTEIN: -- and if there eventually is

1 a well, they'll put that in place, knowing that
2 there was a more enhanced protection.

3 MS. MICHAEL: This is Jackie Michael. I do
4 want to point out that we have very few source water
5 protection areas that exist right now. That program
6 is not scheduled to be complete until May 2003, and,
7 so, out of all the pilot states, we only had 43 --
8 44 source water protection areas available.

9 MS. HAMSHER: I hope everybody bears with
10 this, but this is a very technical argument that a
11 lot of lay people are voting on, and we're trying
12 our best to make sure that we fully understand the
13 implications of this.

14 Is there any other people on the committee
15 or public in attendance that could make sure we
16 clearly understand the implications of this motion
17 and the definition of what's already included in the
18 Pettijohn Classification, and I do have --

19 MS. SAMES: If I could take a stab at it,
20 and somebody else can jump in, if I have it
21 incorrect.

22 Under -- everything that's been proposed
23 right now, which included the wellhead and the
24 source waters and everything else, we're including

1 the areas around the intakes.

2 The recommendations from commenters told us
3 to consider the entire recharge area, some said
4 entire outcrops, some said recharge, some included
5 both, of the sole source aquifers that are karst in
6 nature because a spill in that particular area could
7 contaminate the sole source aquifer in that
8 particular area and affect the drinking water supply
9 where we already know there is not an adequate back-
10 up.

11 MR. LOPEZ: I'm sorry. This is David
12 Lopez. I'm going to have to get off the line. My
13 2:00 is here. So, thanks very much.

14 MS. GERARD: Thank you, and you're gone for
15 the next hour, David?

16 MR. LOPEZ: Correct.

17 MS. GERARD: Just out of curiosity, would
18 you call back in and see if we're still here when
19 you can?

20 MR. LOPEZ: I will.

21 MS. GERARD: Thank you.

22 MR. LOPEZ: I will give it a try. Thank
23 you.

24 MS. GERARD: Thank you.

1 MS. HAMSHER: Thank you. I know, Lois, you
2 had -- were you?

3 MS. SAMES: So, the difference is basically
4 under the one proposal, we're including the intakes
5 and the area around the intakes subject to
6 contamination, and in the other, we're including the
7 entire recharge area for the sole source aquifers
8 that are karst in nature.

9 MS. GERARD: So, this motion is just on the
10 recharge areas?

11 MS. HAMSHER: That's -- yes.

12 MR. HARRIS: That's right.

13 MS. HAMSHER: Yes. That was --

14 MS. GERARD: And we have a second on that?

15 MS. HAMSHER: No, we have not yet had a
16 second.

17 MS. SCHELHAUS: This is Ruth. I'll second
18 it.

19 MS. HAMSHER: Okay.

20 MS. GERARD: I thought we did. Okay. Is
21 there more discussion?

22 MS. HAMSHER: Could I ask Louise from API,
23 who's been involved in this, to add anything that we
24 might be missing before we vote?

1 MS. SCOTT: Christina's explanation is --

2 MS. HAMSHER: Could you introduce yourself?

3 MS. SCOTT: I'm sorry. I'm Louise Scott
4 with American Petroleum Institute, and Christina's
5 explanation is consistent with my understanding.

6 This motion would deal with the recharge
7 areas of sole source aquifers in karst formation.

8 MS. SAMES: Yes.

9 MS. SCOTT: Not the entire aquifer but more
10 than the intake area which is already included in
11 the model.

12 MS. SAMES: Yes.

13 MS. GERARD: So, it's a more conservative
14 proposal than we had in the NPRM?

15 MS. SCOTT: Yes.

16 MS. GERARD: Is there -- is that the end of
17 the discussion on this one?

18 MS. EPSTEIN: Wait a minute. I'm not sure
19 I understood Louise's point. Recharge areas for the
20 aquifer but not for control aquifers?

21 MS. SCOTT: According to the motion that
22 was made, this deals with the recharge zones in the
23 aquifer.

24 MS. SAMES: Yes. The motion on the table

1 is to include the recharge areas of the sole source
2 aquifers that are karst in nature.

3 MS. HAMSHER: And those are not included in
4 the current definition and the Pettijohn
5 Classification?

6 MS. SAMES: No. What's included are the
7 intakes in those areas.

8 MS. GERARD: So, the recharge area is
9 broader than the intake.

10 MS. SAMES: Okay. So, for those of you who
11 are in the room and can actually see a map, here's
12 the Edwards aquifer, here's the recharge area. The
13 wellhead protection areas or the sole source aquifer
14 -- I mean, the source water protection areas would
15 be dots in that as opposed to the outcrops, and the
16 Edwards is the biggest sole source aquifer that's
17 karst in nature that this would apply to in the U.S.

18 MS. GERARD: Could you just --

19 MS. SAMES: To the best of my knowledge.

20 MS. GERARD: -- describe that for people
21 who can't see the map?

22 MS. SAMES: For those of you who can't see
23 a map, picture a --

24 MS. GERARD: Shoe.

1 MS. SAMES: Picture a polygon, and the
2 polygon represents the outcrop of the sole source
3 aquifer. The -- under the current proposal, now
4 picture little dots within that polygon. The dots
5 are what's in the current proposal. The dots
6 represent the intakes of the drinking water
7 supplies, and the polygon actually represents the
8 outcrop recharge -- well, the recharge area of the
9 sole source aquifer under the current proposal.

10 MS. SCOTT: This is Louise Scott again. In
11 the work that we did in the three states, on this
12 particular issue, we felt that the protection around
13 the intakes in these areas was sufficient
14 protection, that -- and that is the reason that the
15 entire recharge zone was not included in the model.

16 MR. HARRIS: This is O.D. Harris. I have
17 agonized over this issue for many years. In the
18 aquifer, (1) they can get to the recharge feature
19 within minutes, and (2) they can travel miles, up to
20 10 miles, in that aquifer in ground water in a
21 couple of days, and, so, it's a whole lot different
22 than a regular consolidated type of aquifer.

23 MS. GERARD: And, so, you have proposed a
24 more conservative position in your motion than we

1 took based on the model from the pilot?

2 MR. HARRIS: That's correct.

3 MS. GERARD: And we have a second, and
4 we've had quite a bit of discussion.

5 MS. HAMSHER: Is there any other
6 discussion?

7 (No response)

8 MS. HAMSHER: Let's do roll call on this.

9 MS. SHOWALTER: This is Marilyn Showalter.
10 I just want -- by more conservative, you mean more
11 protective?

12 MS. GERARD: Yes.

13 MS. HAMSHER: Yes.

14 MR. HARRIS: More protective, yes.

15 MS. SHOWALTER: Thank you.

16 MS. GERARD: Better.

17 MS. HAMSHER: Any other discussions or
18 questions? Good clarification.

19 MS. GERARD: How about ecological
20 standpoint, it conserves more. Thank you.

21 MS. HAMSHER: We're entering non-ecological
22 --

23 MS. GERARD: Sorry.

24 MS. HAMSHER: Okay. Can we do a roll call,

1 please?

2 MS. GERARD: Please.

3 MS. HAMSHER: Alvarado?

4 MR. ALVARADO: Yes.

5 MS. HAMSHER: Epperly?

6 MR. EPPERLY: Yes.

7 MS. HAMSHER: Epstein?

8 MS. EPSTEIN: Yes.

9 MS. HAMSHER: Miller?

10 (No response)

11 MS. GERARD: Miller?

12 MR. MILLER: Yes.

13 MS. HAMSHER: Harris?

14 MR. HARRIS: Yes.

15 MS. HAMSHER: Jones?

16 MR. JONES: Yes.

17 MS. HAMSHER: Morgan?

18 (No response)

19 MS. GERARD: She stepped out.

20 MS. HAMSHER: Schelhaus?

21 MS. SCHELHAUS: Yes.

22 MS. HAMSHER: Showalter?

23 MS. SHOWALTER: Yes.

24 MS. HAMSHER: Lopez is gone. Stein?

1 MR. STEIN: Stein. Yes.

2 MS. HAMSHER: Stein, sorry.

3 MR. STEIN: I also have to take off now.

4 MS. GERARD: Okay.

5 MS. HAMSHER: Can you vote on -- I'm sorry.

6 Did you say yes?

7 MR. STEIN: I said yes.

8 MS. HAMSHER: I'm sorry. Thanks, Bruce.

9 And Hamsher, yes. That motion passed with 10 votes,
10 two are absent as of right now.

11 Is there any other motions to amend the
12 drinking water portion of the definition?

13 MS. SCHELHAUS: This is Schelhaus. I don't
14 know about the others, but I'll go ahead and say add
15 the recharge areas of all sole source aquifers.

16 MS. EPSTEIN: Yes, I will second it, and I
17 would have done that myself.

18 MR. HURIAUX: Who seconded it?

19 MS. HAMSHER: That was Lois Epstein who
20 seconded it, is that right, Lois?

21 MS. EPSTEIN: Yes.

22 MS. HAMSHER: Is there other discussion?

23 MS. EPSTEIN: Yes, this is Lois. I think
24 it's important that we all vote on whether we want

1 to protect sole source aquifers or not through this
2 rule.

3 MS. HAMSHER: Is there any other discussion
4 or comments?

5 MR. WILLIAMS: This is Jack Williams again.
6 If I might interject one thing, you know, so you
7 all know --

8 MS. HAMSHER: Maybe -- wait. For the
9 record, just for the process, Jack, we probably
10 should seek to make sure that there isn't any other
11 discussion from the public members that they would
12 hope to enlighten us and invite anybody with a very
13 specific comment on this particular motion that can
14 enlighten us to interject.

15 MS. GERARD: I just wanted to ask a
16 question. On the information about the analysis
17 that was undertaken, was this item analyzed?

18 MS. SAMES: No, we didn't have time to.

19 MS. GERARD: Okay. So, we don't have
20 analysis to support it?

21 MS. SAMES: No. We do know that it's --
22 that the -- it would be 1.5. The percent of the
23 state covered would be 1.5 because we did that
24 analysis in Texas. It's a karst aquifer in Texas.

1 So, the -- it would be the same --

2 MS. HAMSHER: In Texas.

3 MS. SAMES: -- in Texas. Louisiana and
4 California, we didn't have time to do that.

5 MS. EPSTEIN: Christina, on the chart,
6 going back to the chart, it says add all sole source
7 aquifers, and it does give percentages.

8 MS. SAMES: Yes, but I believe that the
9 motion on the table was to include the recharge
10 areas of the sole source aquifers, not the entire
11 aquifer, unless I misunderstood the proposal.

12 MS. EPSTEIN: That was what the motion was.
13 How different aerially would this be? Do you have
14 any idea?

15 MS. SAMES: I think it would be pretty
16 significant. I know that I pulled some information
17 on Louisiana. For example, for Louisiana, if we
18 include the entire sole source aquifer, we end up
19 with about 37 percent of the state being covered.

20 If you only look at the recharge area, I
21 know it's less than that. I don't know
22 significantly how much less than that.

23 MS. EPSTEIN: Okay. So, what we do know is
24 that in certain states, it would be a significant

1 percentage. In other states, it would be small, but
2 there -- now it's turning into my advocacy hat. I
3 would argue that those places do need to be
4 protected even if they do represent a fairly
5 significant portion of certain parts of the country.

6 MS. HAMSHER: Since we've had a motion and
7 seconded, we're in the discussion. The only other
8 thing, Lois, I would add is that is true for many
9 things, and I think that there hasn't been enough
10 analysis yet to do that or pilot test it or peered.

11 It does not preclude it from being added
12 next time, but to arbitrarily include something that
13 has not been included in the analysis --

14 MS. EPSTEIN: It doesn't involve the
15 analysis. The 2.4 percent in Texas and 6.9 percent
16 -- 37 percent in Louisiana, 6.9 percent in
17 California. So, a lot of it -- I don't think that
18 it hasn't been analyzed. I mean, I'm not sure that
19 people should vote based on the lack of work here.

20 What we're voting on is overall protection
21 of sole source aquifers or not.

22 MS. HAMSHER: Okay. But again, my chart
23 has on the very last item on the table for drinking
24 water, is the recharge areas for all sole source.

1 You say Texas would be 1.5, but it's a question
2 mark.

3 MS. EPSTEIN: That's the karst.

4 MS. HAMSHER: No. No. The last one isn't
5 limited to karst. It's all -- the way I read it, I
6 may be wrong, --

7 MS. EPSTEIN: Christina, do we have
8 different charts? I'm reading the most recent one
9 that Cheryl sent by e-mail.

10 MS. SAMES: Lois, the statistics you're
11 providing are for including all sole source aquifers
12 in their entirety. What Denise is referring to is
13 adding the sole source aquifer outcrop and recharge
14 areas, which we don't have statistics on.

15 MS. HAMSHER: And which I thought was the
16 motion.

17 MS. SAMES: Which was the motion on the
18 table. The motion on the table was to add the sole
19 source aquifer recharge areas.

20 MS. EPSTEIN: But if you have a karst, the
21 contractor must have it -- please speak up -- for
22 sole source aquifers generally in the three states.

23 MS. SAMES: We didn't have time to -- the
24 analysis takes time to run. Every time we changed

1 something in the model, it takes time to rerun it,
2 and we ran out of time.

3 MS. EPSTEIN: Okay.

4 MS. SAMES: But, yes, we have the data. It
5 can be run, but in the amount of time that we had,
6 we just didn't have the time to get to that portion.

7 MS. HAMSHER: Could we have any other very
8 salient comments from anybody on the public or
9 committee members?

10 Jack, you were starting to interject when I
11 rudely interrupted you to make sure that we were
12 following procedure.

13 MR. WILLIAMS: No problem at all. You
14 know, just one thing.

15 MS. HAMSHER: You're going to have to speak
16 up a little bit.

17 MR. WILLIAMS: One thing. I just wanted to
18 make sure that everyone understood that, you know,
19 we're dealing with something that's totally
20 different than the karst, you know.

21 The gentleman mentioned that we might have
22 some rights as much as 10 miles and, you know, a
23 couple of days' time frame. In this situation, what
24 we're talking about consolidated rock or we're

1 talking about, you know, sediments.

2 The rate at which ground water moves
3 through the zones are so much slower. We at one
4 point had done some calculations on what a default
5 wellhead protection area might be, and we came up
6 with 2,000 feet, and just using crossings that were
7 generally found in consolidated and unconsolidated
8 aquifers, you know, for that 2,000 feet, we came up
9 with, you know, ground water may move through that
10 zone around the rate of like 26 years for 2,000
11 feet.

12 So, if we're talking about a recharge zone
13 that may be a few miles away for, you know, where
14 the wellhead intake is at, you know, we're talking
15 about a number of years for that water to move from
16 one location to another, and, you know, I would like
17 for you to consider that when you're talking about,
18 you know, trying to define a whole aquifer or the
19 whole recharge zone as a USA.

20 MS. HAMSHER: Is there --

21 MR. WILLIAMS: There's plenty of time for
22 remediation.

23 MS. HAMSHER: Is there any other comments
24 or discussion?

1 MS. SCHELHAUS: Schelhaus.

2 MS. HAMSHER: Yes?

3 MS. SCHELHAUS: What I believe -- I mean,
4 for the communities, the states and EPA to go
5 through and these aquifers to be meaningful sole
6 source aquifers, they were named for the reason in
7 order to protect them, and that there aren't
8 alternative water supplies. So, the whole idea is
9 to keep them from having to be contaminated, which
10 would make them unique.

11 MS. GERARD: We've had quite a bit of
12 discussion on this. I think we should be able to go
13 to a vote on this.

14 MS. HAMSHER: Is there anybody that feels
15 you're not ready to go for a vote and therefore has
16 a comment?

17 (No response)

18 MS. HAMSHER: Let's do roll call.
19 Alvarado?

20 MR. ALVARADO: Could you repeat the motion
21 for us again?

22 MS. SAMES: The motion was to include --
23 I'm sorry -- to include all of the recharge areas
24 for the sole source aquifers.

1 MS. HAMSHER: Alvarado?
2 MR. ALVARADO: Yes.
3 MS. HAMSHER: Epperly?
4 MR. EPPERLY: No.
5 MS. HAMSHER: Epstein?
6 MS. EPSTEIN: Yes.
7 MS. HAMSHER: Miller?
8 MR. MILLER: Yes.
9 MS. HAMSHER: Harris?
10 MR. HARRIS: No.
11 MS. HAMSHER: Jones?
12 MR. JONES: No.
13 MS. HAMSHER: Morgan?
14 MS. MORGAN: No.
15 MS. GERARD: You're back.
16 MS. HAMSHER: Schelhaus?
17 MS. MORGAN: Yes, I'm back.
18 MS. HAMSHER: Schelhaus?
19 MS. SCHELHAUS: Yes.
20 MS. HAMSHER: Showalter?
21 MS. SHOWALTER: No.
22 MS. HAMSHER: Lopez?
23 (No response)
24 MS. HAMSHER: He's still gone. Stein?

1 (No response)

2 MS. HAMSHER: He's gone. Hamsher, no. I -
3 - the count that I had, I had four no votes and six
4 -- I'm sorry -- four yes votes and six nos.

5 MS. GERARD: Six nos.

6 MS. HAMSHER: Now, I'm getting very brain
7 dead.

8 Do we have any other motions to modify the
9 drinking water definition of the USA?

10 MS. MORGAN: This is Mary. Could I just
11 ask one question? Because I know you all voted on
12 one thing while I was gone, and I'm assuming it was
13 the karst.

14 MS. HAMSHER: Yes.

15 MS. MORGAN: Could you tell me what the
16 vote was on that one?

17 MS. GERARD: Unanimously yes.

18 MS. MORGAN: Okay.

19 MS. HAMSHER: And it's the recharge -- if
20 it's a recharge area, not the outcrop.

21 MS. MORGAN: Okay. All right. Thank you.

22 MS. HAMSHER: Is there any other motions to
23 amend the drinking water, and then we probably
24 should wrap up, Barbara, the USA by kind of going

1 back to say that subject to -- if these
2 recommendations are taken under consideration as
3 voted, the committee would approve?

4 MS. BETSOCK: That would be a fine motion.

5 MS. HAMSHER: Okay.

6 MS. GERARD: With the regulatory
7 evaluation.

8 MS. HAMSHER: We have that as a separate
9 motion.

10 MS. GERARD: We're doing them together.

11 MS. HAMSHER: Okay. Then we can easily do
12 that. Is there any other motion to amend -- pardon
13 me?

14 MS. GERARD: What was that, O.D.?

15 MR. HARRIS: Can we take a waste water
16 break?

17 MS. GERARD: After this.

18 MS. HAMSHER: Can we?

19 MS. GERARD: After this.

20 MS. HAMSHER: I will do it -- yes?

21 MS. SCHELHAUS: This is Schelhaus. I have
22 another motion that's separate relative to there be
23 state and local priority additions -- petition
24 process or petition process for everybody, I guess,

1 either to add or delete USAs.

2 MS. HAMSHER: Just a second.

3 MS. SCHELHAUS: I think it's state or local

4 --

5 MS. HAMSHER: Sorry. There's a little bit
6 of side discussion on the procedure here. Just a
7 second, please.

8 MS. SAMES: I believe we currently have a
9 petition process in place. I do know that several
10 people inside government, environmental groups,
11 public and industry recommended that there be a
12 petition process to add or remove unusually
13 sensitive areas, if they had been delineated or had
14 not been delineated.

15 I believe we already have a process in
16 place petitionwise to do that, am I correct? Yes,
17 I'm getting nods for those of you on the phone.

18 MS. SCHELHAUS: Okay.

19 MS. GERARD: Okay. Then could we have a
20 motion to --

21 MS. HAMSHER: Can I --

22 MS. GERARD: -- vote on this with these
23 amendments?

24 MS. HAMSHER: Can I take a kick at it? The

1 Hazardous Liquid Pipeline Safety Committee supports
2 the notice of proposed rulemaking and regulatory
3 evaluations on areas unusually sensitive to
4 environmental damage published in this Federal
5 Register on December 30th, 1999, and finds the
6 proposal technically feasible, reasonable, cost-
7 effective and practical if the preceding recommended
8 modifications are made to the definition.

9 MS. EPSTEIN: It's the following.

10 MS. HAMSHER: Well, we just did them.

11 MS. GERARD: The ones we did today.

12 MS. EPSTEIN: Okay. And -- okay. Are
13 those going to be written out for us?

14 MS. GERARD: Yes, yes. They'll be written
15 out. We can't write them out while we're here.

16 MS. HAMSHER: Should I repeat that? This
17 is Denise.

18 MS. GERARD: You want them read? Is that
19 what you're saying, Lois? You want them read?

20 MS. EPSTEIN: No. I just want to be sure
21 that each one is listed as part.

22 MS. GERARD: Yes.

23 MS. EPSTEIN: Okay.

24 MS. GERARD: Well, we will make a record of

1 all of them.

2 MS. EPSTEIN: And there are some that you -
3 - there were --

4 MS. GERARD: Right.

5 MS. EPSTEIN: Is there discussion at this
6 point?

7 MS. GERARD: Yes. All of them, we take
8 into consideration.

9 MS. BETSOCK: Well, the tie votes were
10 actually -- they did not pass.

11 MS. GERARD: But that doesn't mean we don't
12 take them into consideration.

13 MS. BETSOCK: Right.

14 MS. GERARD: We do.

15 MS. BETSOCK: The count as minority views.

16 MS. GERARD: So, we will take them all into
17 consideration.

18 MS. HAMSHER: Is there a second to my
19 motion?

20 MR. HARRIS: This is O.D. I'll second.

21 MS. HAMSHER: Is there any discussion?

22 PARTICIPANT: Call the question.

23 MS. HAMSHER: Yes. I call the question.

24 MS. GERARD: Who was that?

1 MS. HAMSHER: Okay. Can we have a vote?
2 MS. GERARD: He has a question.
3 MS. HAMSHER: No. I thought you said call
4 the question.
5 PARTICIPANT: Call the vote.
6 MS. HAMSHER: Yes. Let's vote.
7 PARTICIPANT: Call the question.
8 MS. HAMSHER: Alvarado?
9 MR. ALVARADO: Yes.
10 MS. HAMSHER: Epperly?
11 MR. EPPERLY: Yes.
12 MS. HAMSHER: Epstein?
13 MS. EPSTEIN: Yes.
14 MS. HAMSHER: Miller?
15 MR. MILLER: Yes.
16 MS. HAMSHER: Harris?
17 MR. HARRIS: Yes.
18 MS. HAMSHER: Jones?
19 MR. JONES: Yes.
20 MS. HAMSHER: Morgan?
21 MS. MORGAN: Yes.
22 MS. HAMSHER: Schelhaus?
23 MS. SCHELHAUS: Abstain.
24 MS. HAMSHER: Showalter?

1 MS. SHOWALTER: Yes.

2 MS. HAMSHER: Lopez?

3 (No response)

4 MS. HAMSHER: He's still gone. Stein?

5 (No response)

6 MS. HAMSHER: He's still gone. Hamsher,
7 yes. The motion carries with one abstention.

8 I think that completes the USA. Can I
9 suggest that we have a pit stop, 15-minute break?
10 What time is it officially?

11 MS. GERARD: It's 2:25 East Coast time.

12 MS. HAMSHER: We will reconvene in 15
13 minutes and no less.

14 MS. GERARD: Promptly.

15 MS. HAMSHER: No more.

16 MR. MILLER: Stacey

17 MS. GERARD: Yes?

18 MR. MILLER: This is Larry Miller. I'm
19 going to have to break, and I will be leaving and
20 won't be returning.

21 MS. GERARD: Okay. Do you have any
22 comments you wanted to tell me, Larry, regarding the
23 Integrity Management Program?

24 MR. MILLER: I don't have anything at this

1 point. I think there's been a lot of legwork done,
2 and I don't have any further comments.

3 MS. GERARD: And you're generally
4 supportive of the work that you've seen and the
5 comments that you've heard in terms of our
6 considerations?

7 MR. MILLER: Yes, I certainly am.

8 MS. GERARD: Thank you.

9 MR. MILLER: Thank you. Have a good day.

10 MS. GERARD: Thank you for your work on
11 this.

12 MR. MILLER: You're quite welcome.

13 MS. SCHELHAUS: Are we suppose to just
14 leave the line open or --

15 MS. GERARD: Yes.

16 MS. SCHELHAUS: Okay.

17 (Whereupon, a recess was taken.)

18 MS. HAMSHER: Can people hear Cheryl on the
19 phone?

20 MS. GERARD: Do a roll call.

21 MS. WHETSEL: We're going to be doing
22 another roll call, please, to begin the meeting.

23 Okay. Alex?

24 (No response)

1 MS. WHETSEL: Maybe we ought to wait
2 another minute. Mike Epperly?
3 MR. EPPERLY: I'm here.
4 MS. WHETSEL: Lois?
5 MS. EPSTEIN: Yes.
6 MS. WHETSEL: Denise, yes. O.D. Harris?
7 MR. HARRIS: Here.
8 MS. WHETSEL: Willie Jones?
9 MR. JONES: Here.
10 MS. WHETSEL: David Lopez?
11 MS. GERARD: He's gone.
12 MS. WHETSEL: Larry Miller?
13 MR. FELL: He's gone.
14 MS. WHETSEL: Mary Morgan?
15 (No response)
16 MS. WHETSEL: Mary?
17 (No response)
18 MS. WHETSEL: Ruth Ellen?
19 MS. SCHELHAUS: Here.
20 MS. WHETSEL: Marilyn?
21 MS. SHOWALTER: I'm here.
22 MS. GERARD: Thank you.
23 MS. WHETSEL: Thank you. And Bruce is not
24 here, and Alex?

1 (No response)

2 MS. GERARD: So, we're missing Alex and
3 Mary.

4 MS. WHETSEL: Alex, David --

5 MS. GERARD: We're missing who we expect.

6 MS. WHETSEL: Yes.

7 MS. HAMSHER: Although I thought Mary was
8 supposed to be back.

9 MS. GERARD: Yes, Mary should be back.

10 MS. WHETSEL: Mary's missing. Okay.

11 MS. GERARD: Let's give them another
12 minute.

13 MS. HAMSHER: Maybe we can just get
14 started. Maybe we could proceed with kind of an
15 overview again on where we are and what we're voting
16 and then proceed with any motions?

17 MS. GERARD: Let's just wait a little bit
18 more time.

19 MS. EPSTEIN: Does this mean we don't have
20 public interest members?

21 MS. GERARD: What was your question, Lois?

22 MS. EPSTEIN: Now we don't have three
23 members from the public?

24 MS. HAMSHER: We should go through. Is

1 there anybody on -- in -- from the public that is on
2 the phone?

3 MS. GERARD: Ruth Ellen.

4 MS. SCHELHAUS: Yes.

5 MS. HAMSHER: No. I'm sorry. Non-
6 committee members that are still on the phone?

7 (No response)

8 MS. HAMSHER: Okay.

9 MS. GERARD: Okay. So, we have two members
10 of the public. We have one government -- two
11 government and five industry.

12 MS. HAMSHER: Four. I don't think Mary
13 Morgan -- unless Mary Morgan rejoins us.

14 MS. GERARD: Mary Morgan. She'll come
15 back.

16 MS. MORGAN: This is Mary. I'm back.

17 MS. GERARD: Good. We were counting on
18 you.

19 MS. HAMSHER: Is Alex back?

20 MR. ALVARADO: Yes, I'm here.

21 MS. GERARD: Good.

22 MS. HAMSHER: Okay. Okay.

23 MS. GERARD: Good. We have a majority.

24 MS. HAMSHER: We were told to --

1 MS. GERARD: Hello? Did we lose somebody?

2 MS. HAMSHER: Did someone from the public
3 just join in?

4 MS. GERARD: Or drop out?

5 MS. HAMSHER: Okay. Let's -- can we get
6 started?

7 Vote: "Pipeline Integrity Management in High
8 Consequence Areas for Hazardous Liquid Pipelines"

9 Vote: Draft Regulatory Evaluation to Notice of
10 Proposed Rulemaking (NPRM) - "Pipeline
11 Integrity Management in High Consequence Areas for
12 Hazardous Liquid Pipelines"

13 MR. ISRANI: This is Mike Israni. We're
14 going to start on the Pipeline Integrity Management
15 Program Rulemaking.

16 On August 24th, I briefed this committee on
17 the integrity rulemaking as we proposed and the
18 comments that we received. I mentioned that we
19 received comments from 32 sources, and those
20 commenters included trade associations, operators,
21 some federal and state agencies, and some
22 consultants, environmentalists, and some other
23 advocacy groups.

24 I also mentioned that virtually all

1 commenters were supportive for the additional and
2 stronger regulations. Those commenters generally
3 fell into two categories, those who thought the rule
4 was adequate, and there was proper balance between
5 the prescriptor and performance requirements, and
6 those felt it was not sufficiently strong, broad or
7 specific.

8 I'm not going to go through all the
9 comments again, but I'll describe general areas of
10 those comments.

11 We believe that there are 12 general areas
12 where the majority of the commenters had concerns,
13 and those are level of prescriptiveness, level of
14 specificity in the proposed rule, remedial action,
15 remedial and enforcement process, implementation
16 time frames.

17 This is the time frames planned, baseline
18 and reassessment. Applicability of the rule,
19 consensus standard on the pipeline integrity,
20 definition of high-consequence areas, requirements
21 for preventive and mitigative measures.

22 There were comments on OPS expertise in
23 this area, comments on cost-benefit analysis. There
24 were comments on the information from local

1 officials and public. This is for communications,
2 and the 12th area of comments is Appendix C and the
3 guidance and the role of Appendix C in the
4 rulemaking.

5 Now, during the conference call, the
6 advisory group also had some comments, and those
7 comments also fall generally into these 12 areas,
8 and I'm going to cover what the comments are. I'm
9 going to start with three or four main comments.
10 So, you don't have to question those again, and
11 those three or four areas where advisory group
12 had real concerns about is the level of
13 prescriptiveness in the proposed rule, and the time
14 frames for planned, baseline and reassessment, and
15 the third area was consensus standard on the
16 pipeline integrity rulemaking.

17 On the level of specificity in the proposed
18 rule, the proposed rule have both prescriptive and
19 performance standards, and the comments were that,
20 you know, the rule is not prescriptive enough to be
21 enforceable, and our response to that is that we do
22 have both prescriptive and the performance in the
23 rule for good reason.

24 Specifications part of the rule ensure

1 uniformity among the Integrity Management Programs,
2 so that they all address key issues, such as
3 baseline, continual integrity assessment intervals,
4 data integration, and remedial actions, and the
5 performance-based requirements we have put because
6 we believe that those -- most effective processes
7 and the technologies as they come -- become
8 available will be enforced that way.

9 This gives more flexibility to the
10 operators to take advantage of and invest into
11 development of new technology.

12 On the issue of time frames, where we have
13 planned to develop within one year and baseline to
14 be completed within seven years and reassessment
15 maximum intervals at 10-year period.

16 The reason we had all these requirements,
17 for example, the planned for one year, we thought,
18 was adequate which will give industry and operators
19 an opportunity to develop the plan and then set up
20 some kind of schedules for the baseline and
21 procedures on what actions they'll take and how to
22 develop.

23 The one-year plan, we think, is adequate.
24 As far as the baseline is concerned, we give seven-

1 year time frame for good specific reason. We
2 believe that these intervals are appropriate, and
3 they're necessary to support high-quality integrity
4 assessment.

5 In the seven-year period that we have, we
6 require 50 percent of the pipeline to be completed
7 in three and a half years, and we also specify risk
8 factors in this area, and the purpose for having
9 risk factors to be applied before we decide on which
10 pipeline to be tested first, which pipeline to be
11 tested second, we are going to clarify in the rule
12 what really we mean by to be completed in the first
13 three and a half years.

14 We want the highest-risk facilities,
15 highest-risk pipelines to be assessed in the first
16 three and a half years ago, and in the following
17 three and a half years would be the remaining 50
18 percent of the pipeline.

19 As far as 10-year maximum interval, again
20 here our intent was the higher-risk segments would
21 be done first, the medium-risk second, and then the
22 lowest-risk segments would be done in the last one-
23 third frame of the 10-year period.

24 MR. HARRIS: Mike?

1 MR. ISRANI: Yes?

2 MR. HARRIS: This is O.D. Harris. I've
3 just got a note from Mary Morgan, that she has been
4 accidentally disconnected.

5 MR. ISRANI: Yes.

6 MR. HARRIS: And is there anyway for
7 somebody can get her back? She cannot call in.

8 MR. ISRANI: Okay.

9 MR. HARRIS: This is the memo we have.

10 MS. SCHELHAUS: This is Ruth. Something
11 came up, and I have to go.

12 MR. ISRANI: Okay.

13 MS. WHETSEL: I can find out about Mary,
14 and I'll do that as soon as possible.

15 MR. HARRIS: Okay. Good.

16 MS. HAMSHER: I'm wondering, O.D., if you
17 can conference her in on your phone, if that's an
18 easy fix.

19 MR. HARRIS: Is she on --

20 MS. HAMSHER: So, if you just --

21 MR. HARRIS: I believe I can. Hold on.

22 MS. HAMSHER: I think we have --

23 MS. EPSTEIN: This is Lois. I'm really
24 concerned about the public representation now that

1 Ruth Ellen is gone as well. I mean, I'm concerned
2 enough that I don't think we can vote on this.

3 MS. HAMSHER: We need Barbara here to
4 advise us. I think if we have a majority, the rules
5 -- I'm not sure. We can --

6 MS. GERARD: The question is having a
7 majority.

8 MS. HAMSHER: A simple majority or does
9 there need to be --

10 MS. GERARD: It's a simple majority.

11 MS. EPSTEIN: Well, there may be some rule
12 on this, but I think we all should consider on
13 something this important whether we should take into
14 account that we don't have fair -- anywhere close to
15 representation that we should have.

16 MS. GERARD: Barbara stepped out. I'm not
17 sure -- momentarily. We can ask her that question
18 when she gets back. Perhaps we can have a vote and
19 do a mail ballot with the other parties.

20 MR. HARRIS: Okay. I have Mary on. Can
21 you hear Mary?

22 MS. EPSTEIN: I'm also a little concerned
23 about people missing the discussion, too.

24 MR. FELL: We know that, but what can we do

1 about it?

2 MS. EPSTEIN: Well, we, you know, had a
3 certain amount of time, and we may have to set
4 another time.

5 MS. GERARD: Well, let's ask the question.

6 MS. SAMES: We're looking for Barbara. As
7 soon as we find her, or somebody else from our Legal
8 staff, we can probably answer that.

9 MS. GERARD: What is folks' availability
10 for Wednesday morning?

11 MS. SAMES: Lois is unavailable. She's in
12 the Integrity Management meeting.

13 MS. SHOWALTER: This is Marilyn Showalter.
14 I'm unavailable.

15 MS. GERARD: How about Wednesday afternoon?

16 MS. EPSTEIN: What are we doing Wednesday
17 morning, Christina?

18 MS. SAMES: No. I'm sorry. I thought it
19 was Tuesday that Stacey was asking about.

20 MS. EPSTEIN: Okay.

21 MS. SAMES: I'm just going to keep quiet
22 since I'm delirious.

23 MS. GERARD: Okay. Marilyn, did you say
24 you're unavailable Wednesday morning? Marilyn

1 Showalter?

2 MS. SHOWALTER: Yes. Here I am. I was
3 just running to get my calendar.

4 MS. GERARD: Oh, okay.

5 MS. SHOWALTER: What -- well, what time did
6 you mean, were you suggesting?

7 MS. GERARD: Well, let's ask about
8 Wednesday afternoon first. I'm thinking about
9 you're being on the West Coast.

10 MS. SHOWALTER: Yeah. I'm unavailable all
11 Wednesday. In fact, I have an open meeting here,
12 and then I have to go to the airport.

13 MS. HAMSHER: And, plus, we have a number
14 that are not on the phone that we will not know of
15 their availability.

16 MR. FELL: Yes. Why don't we just continue
17 with what we've got?

18 MS. HAMSHER: Can we continue? Can we get
19 Barbara's comment on the majority? Lois, I think
20 you raise a very good point. First of all, we've
21 got to make sure we have a majority, because then
22 it's an easy question to answer.

23 If we do, I think Lois raises a very good
24 point, but perhaps what we can do is get through

1 part of the way, and if there's close votes, perhaps
2 what we can do is postpone that. That complicates
3 it a little bit, but --

4 MS. GERARD: Mary Morgan? O.D.?

5 MR. HARRIS: Yes?

6 MS. GERARD: I can hear that she can't
7 hear.

8 MR. HARRIS: Right. That's what she's
9 saying.

10 MS. GERARD: All right. Well, if you can
11 ask her to hold on, Cheryl's seeing if she can get
12 her back on.

13 MR. HARRIS: You heard them, Mary?

14 MS. MORGAN: No, I can't.

15 MS. GERARD: We don't know what the problem
16 with that is, whether because we ran over the time
17 or what, but Cheryl's working on that.

18 MS. HAMSHER: I think the question is easy.
19 We don't have a majority on the phone.

20 MS. GERARD: I think we still have a
21 majority.

22 MR. FELL: Well, again that's the rule.

23 MS. EPSTEIN: But, you know, I guess I was
24 -- I'm concerned that even if we technically do,

1 that something this important, it may not make sense
2 to proceed just because we don't have people hearing
3 the discussion before the vote, and, you know, this
4 is something so -- you know, that a lot of public
5 groups did comment on in the rulemaking, and I think
6 people would like to participate in the actual vote.

7 MR. FELL: We'd like to hear your comments
8 really whether there's a minority or majority. We
9 will consider all comments. So, the fact that if
10 you get voted down or voted up, we should still
11 consider your comment. I think it doesn't matter as
12 much if you win the vote or lose the vote, but then
13 you've made the comment, Lois.

14 MS. GERARD: We have had comments from
15 Larry Miller.

16 MS. EPSTEIN: What do you mean?

17 MS. GERARD: Well, he sent in some
18 comments, I think, which --

19 MS. EPSTEIN: Well, I think we all did,
20 too. I mean, I'm not sure that covers it.

21 MS. SHOWALTER: This is Marilyn Showalter.
22 I don't know who made the comment that it doesn't
23 matter which way the vote is, but I think we are an
24 appointed committee performing a function, and it

1 does make a difference, I think.

2 MS. GERARD: Yes, and I'm just concerned
3 about not knowing right now whether there's an
4 alternative date. Cheryl's walking in. Did you see
5 if you can get Mary Morgan back on the line?

6 MS. WHETSEL: No. I thought she was on the
7 line.

8 MS. GERARD: She can't hear.

9 MS. WHETSEL: She needs to call direct.

10 MS. GERARD: Right.

11 MS. SAMES: You couldn't find Barbara?

12 MS. GERARD: And we're missing Barbara.

13 All right. I'd like to continue the discussion with
14 those of you who are on, in case we cannot get you
15 back together as a group this week. Is that all
16 right?

17 MS. MORGAN: I can't hear most of what
18 you're saying.

19 MS. GERARD: Mary, if you can hold on, they
20 are trying to -- she -- Cheryl thought that you were
21 on the line. She now knows that you can't hear.
22 So, she's going to see about getting you on the
23 line.

24 MS. SHOWALTER: This is Marilyn Showalter.

1 I can tell you I can't -- there is no time this
2 week. I mean, I'll be traveling on Thursday and
3 Friday and have -- and part of Wednesday and have a
4 formal hearing on Wednesday.

5 MS. GERARD: Do people have their calendars
6 with them or can you commit to a time that would be
7 next week?

8 MS. SAMES: Maybe if I could offer a
9 suggestion. Maybe what we can do is poll everyone
10 for the remainder of this week and the very
11 beginning of next week, and then determine the best
12 day where we get the majority and pretty much equal
13 representation among the groups to continue.

14 MS. GERARD: There's no opportunity to get
15 notice out to the public either. How is next Monday
16 for people? Can we just get a sense if there's
17 violent objections to Monday afternoon?

18 MR. HARRIS: Monday morning.

19 MS. GERARD: Monday morning is better for
20 you?

21 MR. HARRIS: Right.

22 MS. MORGAN: This is Mary Morgan. I am not
23 available then.

24 MS. SHOWALTER: This is Marilyn Showalter.

1 Almost the only time I can do it next week is --
2 would be Wednesday, from 11 to 1 East Coast time.

3 MS. GERARD: Barbara has walked into the
4 room. Mary Morgan lost the line and is not really
5 able to hear. Why don't you try? It's one thing
6 about whether there's a majority, it's another thing
7 -- Ruth Ellen had to drop off the line. Larry is
8 off the line. Lopez is out. About the question of
9 balance, even if there is the number that would make
10 the majority.

11 MS. BETSOCK: Not a problem for legal
12 sufficiency of committee action. The difficulty is
13 only for the membership.

14 MS. HAMSHER: Did everybody hear Barbara's
15 comment?

16 MS. GERARD: I believe there's eight people
17 still on the line.

18 MS. BETSOCK: There is a majority then.
19 So, there certainly is ability to conduct business.

20 MS. EPSTEIN: And if there were seven,
21 there's not enough?

22 MS. BETSOCK: Well, it's really -- I think
23 seven is probably enough because we're short in the
24 committee.

1 MS. EPSTEIN: How many do we have now?

2 MS. GERARD: We have Alex, Mike, you, Lois,
3 O.D., Denise, Willie. We hope to get back Mary. We
4 have Marilyn. Eight counting Mary Morgan, if we can
5 get her back on the phone.

6 MS. EPSTEIN: Well, I was going to suggest
7 that if you all can't figure it out, I might be able
8 to do something. We have eight lines that nobody's
9 using. Everybody can call on that number. It's a
10 800 number.

11 MS. BETSOCK: What is the alternative?

12 MS. GERARD: Well, we're having trouble.
13 She's having a problem.

14 MS. BETSOCK: Do we have another date?

15 MS. GERARD: No.

16 MS. BETSOCK: It doesn't seem likely.

17 MS. GERARD: All right.

18 MS. SHOWALTER: This is Marilyn Showalter.

19 I guess my concern is that it really is unfair to
20 the committee members to put them to the choice of
21 either not participating or changing their schedules
22 or they can't change their schedules.

23 So, we had a published time when we were
24 supposed to accomplish all these tasks and didn't.

1 So, I think the best thing is to find some time next
2 week, if possible.

3 My only caveat on that is I am not aware of
4 anyone, other than me, who's actually offering an
5 amendment. Now, there were, you know, more than a
6 dozen just earlier that weren't circulated. So,
7 maybe -- one preliminary question I have is, how --

8 MS. GERARD: How many amendments?

9 MS. SHOWALTER: How many disputes are
10 there? I guess I would say if there are any, if
11 there's going to be a debate among the committee
12 members on the merits of things, then I really think
13 we need to put it over. If there aren't any, then
14 we could take care of it with this quorum.

15 MS. EPSTEIN: I was going to offer some
16 amendments on -- after we hear more specificity and
17 changes in the time frames.

18 MS. SHOWALTER: Okay. In that case, it
19 seems to me that we could do a couple of things.
20 One is we could save an awful lot of time on these
21 meetings if we had a practice of circulating things
22 in writing beforehand because then the members would
23 be both better informed and able to respond much
24 more quickly.

1 So, if we know or could e-mail each other
2 what we won't oppose, then I think we could probably
3 have a pretty short meeting, not just a vote but
4 limited discussion. We've spent so much of the last
5 three hours just trying to understand what each
6 other was proposing.

7 MS. GERARD: Well, that last one might have
8 been the most complex one we have to do for awhile.

9 Could I ask just to have a sense from Lois
10 and from Marilyn of the -- if you could state what
11 your amendments are, just so we could get a sense of
12 what they are?

13 MS. SHOWALTER: The only issue I'm raising
14 is what I did circulate already, and that would be
15 to add stress on the pipe as a factor, as a risk
16 factor.

17 MS. GERARD: And we have no problem with
18 that. And, Lois, what are yours?

19 MS. EPSTEIN: I was going to discuss the
20 time frame on the repair schedule, mandatory leak
21 detection with performance requirement to it, and
22 some specificity into the valves. Making Appendix C
23 mandatory, and then in terms of the testing time
24 frame, I was going to look back at my comments and

1 ask for a vote on the proposal as I wrote it up in
2 my comments.

3 MR. ISRANI: Lois, you did the entire rule
4 now.

5 MS. EPSTEIN: Pardon?

6 MR. ISRANI: I said you covered all the
7 elements of the rule.

8 MS. GERARD: Lois, on the performance
9 repair, we spoke about that at the last meeting
10 about what we were considering, and that's a fairly
11 easy amendment.

12 On the leak detection and the valves, could
13 you be a little more specific?

14 MS. EPSTEIN: That I was going to propose
15 that OPS do a rulemaking on requiring leak detection
16 systems of a particular level of performance. I'm
17 not going to specify what that should be because I'm
18 not an expert in all the capabilities, but I want
19 people -- pipeline companies to use the leak
20 detection systems that are good and will detect
21 leaks at an early stage.

22 MS. GERARD: That would be a separate
23 action, right?

24 MR. ISRANI: Let me answer that. Lois, we

1 already have a requirement in our regulations under
2 195.444. This was included last year. There's a
3 separate rulemaking on the leak detection.

4 MS. EPSTEIN: It only said if you have a
5 system, it should live up to the standard, but it
6 doesn't, and that standard is voluntary.

7 I think we need that in this rule, that
8 ensures that companies have leak detections in place
9 that is capable of detecting leaks at an early
10 stage.

11 I mean, it gets back to the discussion we
12 had both face-to-face and on the last phone call
13 that Marilyn raised about how do we ensure that this
14 rule is enforceable or not?

15 MS. GERARD: Right. We can handle the
16 repair one by virtue of the questions that were in
17 the rule, but I don't think we had specific-enough
18 questions on the leak detection system for the type
19 of change you're talking about to be within the
20 scope of this rule.

21 MS. EPSTEIN: Well, the same thing on the
22 valves.

23 MS. GERARD: And the valves, we did have
24 questions on, and we could take that within the

1 scope of this rule.

2 MS. EPSTEIN: Questions in your proposal,
3 you mean?

4 MS. GERARD: Yes, yes, and we were making
5 changes in the valve area.

6 We have heard from Cheryl that in order to
7 get Mary Morgan back on, if you all hang up and dial
8 back, then we believe we could get Mary Morgan on
9 the line, and if that is the -- does anybody else
10 have amendments that they're going to want to offer?

11 MS. EPSTEIN: The time frame in terms of
12 testing, I think, is going to be the one that people
13 are going to want to discuss the most because you
14 all have set down some rationale, and I wanted to
15 respond to that.

16 MS. WHETSEL: You have until 4:00. So, we
17 can get an extension on the phone line, and we also
18 need to decide on the --

19 MS. HAMSHER: This is Denise Hamsher. If
20 you want to briefly talk about amendment, the only
21 clarification or change that we have is to clarify
22 that OPS does the mapping, and to set the effective
23 date for the requirements to be triggered upon
24 designation of the high-consequence areas, not

1 publishing of the rule because we can't do that
2 until -- and then to correct the rulemaking in the
3 footnote, limiting the use of internal inspection
4 tool for ERW pipe, which I believe was in error,
5 and, so, I don't -- and the only third issue is I
6 would like to make a motion that we ask in parallel
7 with, not so much preceding the final rule, that OPS
8 go back and redo an actual real cost-benefit
9 analysis based on the framework that these
10 published.

11 So, that's the extent of our modifications
12 to the rule that I have. That's Denise Hamsher.
13 Sorry.

14 MR. ALVARADO: This is Alex Alvarado. I
15 also have a concern and recommendation, too.

16 MS. GERARD: Yes?

17 MR. ALVARADO: That the rule be limited to
18 on-shore, and that off-shore be considered under a
19 separate ruling.

20 MS. GERARD: Yes. Actually, we didn't mean
21 to be picking up off-shore. We meant only to be
22 including navigable waterways that were pathways to
23 communities.

24 So, there's a number of these which are

1 fairly easy to deal with, and there's a couple that
2 are more difficult.

3 MS. SAMES: Are there other amendments?

4 MS. GERARD: Are there any other
5 amendments?

6 MS. EPSTEIN: Appendix C possibly.

7 MS. GERARD: Okay. How about if you all
8 hang up and call right back, so Mary Morgan can get
9 on the line?

10 PARTICIPANT: Okay. Same number, right?

11 MS. GERARD: Yes.

12 MS. SHOWALTER: This is Marilyn Showalter.

13 I have another conference call beginning -- well,
14 at 12:30 or 3:30 your time in which I also have to
15 vote, and I have to be on it. So, you know, I will
16 not be able to participate beyond 10 minutes from
17 now or 15 minutes. So, I don't know what that does
18 to your quorum. I think it ends it.

19 MS. GERARD: How is everybody between next
20 Wednesday, 11 to 1 East Coast time?

21 MS. HAMSHER: That's the 20th?

22 MS. GERARD: Mary Morgan, what are you
23 saying?

24 MS. MORGAN: I'm not available any time

1 next week.

2 MR. EPPERLY: I am not available. This is
3 Mike Epperly.

4 MR. HARRIS: This is O.D. Harris. I'm not
5 available either.

6 MS. GERARD: Marilyn Showalter, are you
7 still there?

8 MS. SHOWALTER: Yes, I am.

9 MS. GERARD: Did you say that was the only
10 time that you were available?

11 MS. SHOWALTER: We're talking about next
12 week, right?

13 MS. GERARD: Next week.

14 MS. SHOWALTER: If we go into Thursday,
15 there are a lot of possibilities in the -- well,
16 late afternoon.

17 MS. GERARD: Okay. Let's try other people.
18 Late Thursday afternoon.

19 MR. HARRIS: Harris, not available.

20 MS. MORGAN: Mary Morgan, I'm not
21 available.

22 MR. EPPERLY: Mike Epperly, not available.

23 MR. JONES: This is Willie Jones.

24 Thursday's fine.

1 MS. GERARD: Is there any time on Friday,
2 next Friday?

3 MS. SHOWALTER: This is Marilyn. I'm in
4 the same position. After 3:30 your time, I could do
5 it.

6 MS. GERARD: How are other people? Late
7 next Friday, a week from this Friday.

8 MS. MORGAN: This is Mary Morgan. I'm
9 fine.

10 MS. GERARD: Okay. I heard Mary. Alex,
11 what about you? Late Friday.

12 MR. ALVARADO: I'm fine with Friday, the
13 22nd.

14 MS. GERARD: Mike Epperly? Late Friday?

15 MR. EPPERLY: No.

16 MS. GERARD: Lois Epstein?

17 MS. EPSTEIN: That's fine.

18 MS. GERARD: O.D.?

19 MR. HARRIS: That's fine.

20 MS. GERARD: Denise?

21 MS. HAMSHER: Yes.

22 MS. GERARD: Jones?

23 MR. JONES: Yes.

24 MS. GERARD: Mary Morgan, you said yes.

1 Ruth Ellen is gone. Marilyn, you said yes. So,
2 we've got the majority of these folks. We can try
3 to get some other people late Friday afternoon.
4 Hold on one second.

5 (Pause)

6 MS. GERARD: Okay. For those of you who
7 are on the line, would you -- that have discussion
8 points, would you mind staying on the line so we
9 could make some progress with you? It might save us
10 some time next week, and we will pick up the rest of
11 the call next Friday afternoon. Cheryl will send
12 you a time.

13 MS. HAMSHER: To address Lois's concern, is
14 it possible to have a turn-around of the transcript
15 for this point on -- so that those that are not
16 involved in the room have the benefit of those
17 discussion points?

18 MS. GERARD: We'll try to have some
19 information exchange back on that.

20 Let's -- Marilyn, stress factor. We've all
21 seen that, and we can work with that, and on the
22 repair criteria, we can work with that, and on the
23 leak detection, most of that is beyond the scope of
24 this rulemaking. We will --

1 MS. EPSTEIN: Leak detection is mentioned
2 in the rulemaking.

3 MR. ISRANI: We have mentioned, but we've
4 given reference to the current standard, current
5 requirement, which came only recently, like last
6 year, and there were lots of comments, and it was
7 responded then.

8 MS. GERARD: I'm just saying that the scope
9 that you want to do, Lois, as far as you want to go
10 within this rulemaking, is beyond what we have --

11 MS. EPSTEIN: I guess I'm not a hundred
12 percent convinced that's the case, given that leak
13 detection is mentioned. I'm wondering whether a
14 facility that has virtually no leak detection
15 systems, you know, no scada system of any substance,
16 I don't know if that's even possible, but, you know,
17 one that's down all the time, say, whether they
18 would be able to consider having performed integrity
19 management.

20 MS. GERARD: Well, I would have the same
21 question, and I think we can do some work in that
22 area within this rule in terms of some development
23 of criteria, that if met, the operator should
24 consider having a functioning leak detection system,

1 something along those lines.

2 MS. EPSTEIN: Right.

3 MS. GERARD: So, I think we could make some
4 progress in that area and perhaps you could suggest
5 some criteria that you might e-mail around to the
6 members before the next call, and in the valve area,
7 what did you have in mind on that one, Lois?

8 MS. EPSTEIN: Criteria for placement.

9 MS. GERARD: Do you have some suggestions
10 on what kind of criteria? Because we were working
11 on that. That was one of the areas we were working
12 on to some depth.

13 MS. EPSTEIN: Maybe you can provide that,
14 and we can react to that.

15 MS. GERARD: I think we can maybe share
16 some information about the types of things we're
17 considering.

18 MS. EPSTEIN: Okay.

19 MS. GERARD: The time frame issue, again
20 that was yours, Lois.

21 MS. EPSTEIN: Yeah. I wanted to respond to
22 the memo you all had sent out because I disagree
23 that by speeding up the time frame, you necessarily
24 get poor performance because you could incorporate

1 performance criteria for internal inspection
2 devices.

3 MS. GERARD: Our rationale on that comes
4 more from our assessment about what the capability
5 is today and the quality of the assessments that are
6 available and our belief that it is not quick to
7 grow this capability, and we are concerned about
8 poor quality assessments causing a greater safety
9 problem.

MS. EPSTEIN: Yeah. I'm
10 concerned about poor quality assessment as well, but
11 I -- my experience has been very different with
12 that, whether we're talking about whether the car
13 industry can develop a cleaner engine or whether the
14 leak detection systems for underground storage tanks
15 can be improved.

16 The folks -- the government has a mandate.
17 You can -- you build up the supply of providers
18 that meet that mandate. So, I guess I disagree.
19 I'm talking basically the government setting the
20 standard and that creates the market which increases
21 the supply.

22 MS. GERARD: All right. Well, I --

23 MS. EPSTEIN: I believe the standard has
24 performance criteria for the devices in it. You're

1 able to move that market.

2 MS. GERARD: Well, I would hope that for
3 each of these things, like Marilyn did, that each of
4 you draft the language with the amendment that you
5 want to propose and circulate it, so we can collect
6 those and have them ready for next Friday afternoon.

7 Okay, Lois. These were -- a number of these were
8 yours.

9 MS. EPSTEIN: Right.

10 MS. GERARD: Okay. The mapping question,
11 that came from Denise Hamsher. Could you state what
12 you would think in terms of an amendment?

13 MS. HAMSHER: I would just ask OPS to
14 clarify in the rulemaking to ensure that high-
15 consequence areas are clearly identified and mapped
16 by OPS. I believe I know that's your intention. It
17 is not clear in the notice of proposed rulemaking.

18 MS. GERARD: And on the triggering of the
19 designation?

20 MS. HAMSHER: That although we can --
21 industry can start doing some generic parts of
22 integrity management plans, they can't do the real
23 assessment that's necessary on a specific high-
24 consequence area until they know that high-

1 consequence area, and, so, the year trigger on
2 completing integrity management plan should be
3 triggered upon the completion of the high-
4 consequence area mapping, not the publishing of the
5 rule.

6 MS. EPSTEIN: Aren't those going to be
7 close to simultaneous?

8 MS. HAMSHER: They're supposed to be, and
9 then that would make my concern moot. But unless
10 we're assured that it's there, it could be HCAs
11 throughout the United States are delayed till the
12 11th month, and we have one month to get out there
13 and scramble to finish high-consequence plans.

14 MS. GERARD: I think we're planning on a
15 clarification that basically creates a two-phase,
16 the first three and a half, second three and a half,
17 thinking of something along those lines with the
18 mapping to be corresponding to that, so that it
19 would be maybe a two-step process, that we would
20 expect that you would have plans for those areas
21 that were in the first phase within the first three
22 and a half years, something more along those lines.

23 MS. HAMSHER: Again, the only thing I would
24 add is that if they're not contiguous states, and

1 you dot through a pipeline system, it is very
2 difficult to make --

3 MS. GERARD: We'll look at that.

4 MS. HAMSHER: -- a cohesive integrity
5 management --

6 MS. GERARD: We'll look at that and give
7 you some information on that next week. I would
8 think they would be contiguous, and that we would
9 work to arrange the schedule in that way. But if
10 you could have an amendment drafted?

11 MS. HAMSHER: I would.

12 MS. GERARD: And then, I believe you had
13 one on the footnote?

14 MS. HAMSHER: Just to correct the
15 rulemaking to reflect that pipelines with ERW can in
16 fact be and should be internally inspected with a
17 variety of tools.

18 MR. ISRANI: Yes.

19 MS. GERARD: Okay. But produce your
20 amendment, if you can, and I think that a number of
21 these, with these amendments prepared, will make
22 this next meeting much quicker than the USA meeting.

23 On cost-benefit, what was your request
24 there?

1 MS. HAMSHER: I would make a motion that we
2 move to approve the rulemaking as written as
3 technically feasible, reasonable and practical, but
4 omit the word "cost-effective" and separately make a
5 motion that the standard and the regulatory
6 evaluation is not consistent with OPS's own
7 framework, and that somewhat in parallel with
8 issuance of the final rule, not necessarily before,
9 that OPS be asked to do a more thorough cost-benefit
10 analysis that deals with the costs of the benefits
11 to be received and all the costs of implementing as
12 well as following the framework itself.

13 MS. GERARD: You understand?

14 MR. FELL: I hear. This is Marvin Fell.
15 If I understand it, you want to improve cost-
16 benefit, but you don't want to hold up the rule, is
17 that correct?

18 MS. HAMSHER: Exactly, and I think it's
19 imperative because you've got to evaluate the rule.
20 Congress will be asking yourselves to do that.

21 Also, in some future, we need to evaluate
22 the extension of the rule, and unless you have a
23 very effective cost-benefit analysis for this scope,
24 it's very difficult to in the future imagine the

1 extension of this scope. So, do a good job now on
2 the benefits and costs and identifying the problems,
3 the leaks in the high-consequence areas, etc.,
4 before we start looking at expanding the scope and
5 future years.

6 MS. EPSTEIN: This is Lois. Along those
7 lines, I know I wasn't the only one that made some
8 comments about the lack of transparency of the cost-
9 benefit analysis that had been done. The benefits
10 were not clearly calculated. It wasn't apparent to
11 me how those numbers were derived at, and, so, I
12 guess, I think it actually may be helpful, now that
13 we've talked about changing the high-consequence
14 areas, that changes the numbers as well, it might be
15 helpful to actually hear from Marvin where you're at
16 with the analysis.

17 MS. GERARD: All right. Let's not do that
18 right now.

19 MS. EPSTEIN: That's fine, but maybe he can
20 do a write-up for us.

21 MS. GERARD: All right. Well, he has been
22 doing some work in this area, and, so, the idea
23 would be to have a better record of what the costs
24 and benefits are.

1 MS. HAMSHER: And I think following the
2 actual guidelines in the framework, to clearly
3 identify the problem, all the costs and walk through
4 it sequentially as it's laid out in the framework
5 and going back again that the recommendation in the
6 framework as Lois correctly points out is a
7 transparency of how you derive those costs and
8 benefits to be received.

9 MS. GERARD: Okay. The next item was the
10 on-shore item. Alex, are you still there?

11 MR. ALVARADO: Yes, I'm still here.

12 MS. GERARD: Okay. I think that we can
13 clarify this in such a way that it would probably
14 address your problem.

15 MR. ALVARADO: Yeah. Once they get into
16 follow-up, I think at the last March meeting, I was
17 -- we were informed that some of the USAs are going
18 to include some off-shore areas, and see what the
19 implications would be on that.

20 MS. GERARD: If they do, it's because of
21 the aquatic species that lives in that water.

22 MR. ALVARADO: So, based on that, would
23 that then make the rule applicable to off-shore
24 pipelines?

1 MS. GERARD: No, no. It's -- we're
2 defining high-consequence areas based on where
3 people live and where we have water people drink or
4 ecological species that live in a particular area we
5 want to protect. So, it's not going to
6 automatically pull it off-shore, but there might be
7 some water where there's aquatically-dependent
8 species that might be in off-shore waters.

9 I think we can clarify that. I think it's
10 going to be a small amount. I think it would be a
11 small amount of off-shore water that we would be
12 getting into here. But it's certainly not off-shore
13 in the sense that we traditionally have defined off-
14 shore.

15 MS. HAMSHER: Could -- would I -- could I
16 suggest -- this is Denise Hamsher -- that that's a
17 subject of a separate rulemaking, just as natural
18 gas pipelines or pipelines less than 500 miles would
19 not be included in the scope of this, even if
20 they're in a high-consequence area? They have to be
21 subject to a separate rulemaking. So, if you had
22 off-shore pipe subject to a high-consequence area,
23 that would be a separate rulemaking.

24 MS. GERARD: I'm not sure we're willing to

1 go there right this minute because I don't -- I
2 really don't think it's that much that we're talking
3 about, but we'll look at that.

4 MS. SHOWALTER: This is Marilyn Showalter.
5 I'm going to have to ring off.

6 MS. GERARD: Okay.

7 MS. SHOWALTER: If anyone has taken notes
8 of all of those items we just discussed and can
9 circulate them in a bullet point form, --

10 MS. GERARD: Okay.

11 MS. SHOWALTER: -- that would be helpful.

12 MS. GERARD: We will do that, and, Marilyn,
13 when you said late Thursday afternoon, what is that
14 time?

15 MS. SHOWALTER: It was Friday, I thought we
16 were talking about.

17 MS. GERARD: Yes, Friday.

18 MS. SHOWALTER: Oh, --

19 MS. GERARD: Friday. What time were you
20 talking about was good for you?

21 MS. SHOWALTER: Well, 3:30 East Coast time
22 on either Thursday or Friday will work for me.

23 MS. GERARD: Okay. Well, we're going to go
24 towards Friday. So, if you could block that time

1 out, most people -- more people were available on
2 Friday afternoon at 3:30.

3 MS. SHOWALTER: All right. Thanks.

4 MS. GERARD: Thank you. And, Lois, your
5 last point on the appendix?

6 MS. EPSTEIN: I partly wanted to hold off
7 on that till we saw how the other discussions went.

8 MS. GERARD: Okay. All right. Well, we
9 will write up some notes on these areas and points
10 that have been considered and try to provide more
11 information where we can in preparation for next
12 week's call, and in exchange, all of you who have
13 amendments -- we'll try to get our notes out. What
14 is today?

15 MR. ISRANI: Today is Monday.

16 MS. GERARD: It's only Monday? We'll try
17 to get those out in the next 48 hours, very briefly,
18 and then if you could turn around and get your
19 amendments drafted, you know, towards the end of
20 this week, to give everybody about a week to think
21 about it, you know, again not letting, you know, my
22 expression about let's not let the perfect be the
23 enemy of the good.

24 I think there's a number of these things we

1 were either making improvements on or could still
2 make improvements on that would be in keeping with
3 the spirit of some of the members at least.

4 So, with that, I think if there's any other
5 comments or questions -- Cheryl, we'll be able to
6 get a phone line for a week from Friday and get a
7 number out to everybody.

8 When would we get the number? About how
9 much in advance?

10 MS. WHETSEL: I think it's like 24 hours or
11 something.

12 MS. GERARD: Okay. So, we'll be --

13 MS. WHETSEL: I'll do it as soon as I can.

14 MS. GERARD: And we'll be calling you all
15 with the number, and then, with that, I think we
16 will adjourn for the day, and I thank you all for
17 your dedication, reading all these materials in
18 advance.

19 We'll try to get you some additional
20 material on IMP, and then we will talk to you a week
21 from Friday, about 10 days.

22 Thank you. Good night.

23 (Whereupon, at 3:28 p.m., the meeting was
24 adjourned, to reconvene Friday afternoon, September

1 22nd, 2000, at 3:30 p.m.)

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